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Tuesday
March 11, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

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Energy Department

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Government Employees
Personnel Management Office

Historic Preservation
Surface Mining Reclamation and Enforcement Office

Mortgage Insurance
Housing and Urban Development Department

Trade Practices
Federal Trade Commission

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 20; 9 am and 1 pm. (identical sessions)

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW, Washington, DC

RESERVATIONS: Ruth Reedy, 202-523-5239, for reservations.

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout Denver Federal Information Center, 303-236-7181, for reservations

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23, Earl Cabell Federal Building, 1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:

Dallas	214-767-8585
Ft. Worth	817-334-3624
Austin	512-472-5494
Houston	713-229-2552
San Antonio	512-224-4471, for reservations

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DEPARTMENT OF ENERGY

10 CFR Part 216

Defense Priorities and Allocations System

AGENCY: Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) is amending the regulation in accordance with the newly established Defense Priorities and Allocations System by the Department of Commerce (15 CFR Part 350).

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT:
Gilbert J. Breer, Property and Equipment Management Division (MA–422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 252–4920
Elliot Winnick, Office of the AGC for Procurement and Financial Incentives, GC–43, Washington, DC 20585, (202) 252–1526

SUPPLEMENTARY INFORMATION: DOE finds that advance notice and comment, which are generally required by the Administrative Procedure Act, are unnecessary for this technical amendment. This finding is based on the fact that the changes are limited to procedural guidance and that the changes will not adversely affect the public or impose any additional burden on the public.

As a result, the following sections are affected: The "Authority," is revised by removing the outdated authority citation and inserting the new authority citation. Revise section 216.1, "Introduction," paragraph (a) by adding a new sentence between the fourth and last sentence; paragraph (c) is amended by removing "Defense Materials System ("DMS") and the Defense Priorities System ("DPS") established by the Department of Commerce.", and inserting in its place "Defense Priorities and Allocations System ("DPAS") regulation established by the Department of Commerce, 15 CFR Part 350." Section 216.2, "Definitions," paragraphs (e) and (h) are revised by removing the definitions for "BDC" and "FPA" and inserting in their places the definitions for "DOC" and "FEMA," respectively. Section 216.3, "Requests for assistance," paragraph (a), introductory text, is amended by revising the second sentence by removing the out-of-date mailing address for applications and inserting the correct mailing address; paragraph (a)(11) is amended by removing "DMS Regulation 1" and inserting in its place "the DPAS Regulation, Section 350.31(e)(2)"; paragraph (b) is amended by removing "BDC" and inserting in its place "DOC." Section 216.5 paragraphs (a) and (b) are amended by removing "BDC" and inserting in its place "DOC"; paragraph (b) is further amended by removing "DMS Regulation 1 and DPS Regulation 1" and inserting in its place "the DPAS Regulation,". Section 216.6, "Petition for reconsideration," is amended by removing "216.9" and inserting in its place "216.8." Section 216.7, "Conflict of priority orders," is amended by removing "BDC" and "FPA" and inserting in their places "DOC" and "FEMA," respectively. Section 216.8, "Communications," is amended by revising the address, communications are addressed to.

List of Subjects in 10 CFR Part 216

Energy, Maximize domestic energy supplies, Government contracts.

For reasons set out in the preamble, Chapter II to Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on March 5, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 216—MATERIALS ALLOCATION AND PRIORITY PERFORMANCE UNDER CONTRACTS OR ORDERS TO MAXIMIZE DOMESTIC ENERGY SUPPLIES

1. The authority citation for Part 216 is revised to read as follows:

Authority: Section 104 of the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, 89 Stat. 871; and section 101(c) of the Defense Production Act of 1950 (DPA) (50 U.S.C. App. 2071(c)), as amended; section 7, E.O. 11912, April 13, 1976; Defense Mobilization Order No. 13, September 22, 1976; 44 CFR Part 330; Defense Priorities and Allocations System Delegation No. 2, 49 FR 30430.

2. In § 216.1, paragraph (a) is amended by adding a sentence between the fourth and last sentence, and by revising the last sentence of paragraph (c) to read as follows:

§ 216.1 Introduction.

(a) * * *Delegation No. 4 was superseded by Defense Priorities and Allocations System Delegation No. 2, effective date August 29, 1984, 49 FR 30430. * * *

* * * * *

(c) * * * If these additional two findings are made, the Department of Commerce will notify DOE, and DOE will inform the applicant that it has been granted the right to use priority ratings under the Defense Priorities and Allocations System ("DPAS") regulation established by the Department of Commerce, 15 CFR 350.

3. Section 216.2 is amended by revising paragraphs (e) and (h) to read as follows:

§ 216.2 Definitions.

* * * * *

(e) "DOC" means the Department of Commerce, acting through the Secretary or the delegate of the Secretary.

* * * * *

(h) "FEMA" means the Federal Emergency Management Agency.

* * * * *

4. Section 216.3 is amended by revising the second sentence of paragraph (a) introductory text; by revising paragraph (a)(11); and by revising paragraph (b) to read as follows:

§ 216.3 Requests for assistance.

(a) * * * The application should be sent to: Department of Energy, Procurement and Assistance Management Directorate, Attn: MA–422, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585.

* * *

* * * * *

(11) Quarterly estimates of requirements for controlled materials, if applicable, by shapes and forms as prescribed by the DPAS regulation, § 350.31(e)(2).

(b) DOE, on consultation with the DOC, may prescribe standard forms of application or letters of instruction for use by all persons seeking assistance.

* * * * *

§ 216.5 [Amended]

5. Section 216.5 paragraphs (a) and (b) are amended by removing "BDC" and inserting in its place "DOC"; paragraph (b) is further amended by removing "DMS Regulation 1 and DPS Regulation 1," and inserting in its place "the DPAS Regulation,".

§ 216.6 [Amended]

6. Section 216.6 is amended by changing the reference "216.9" to read "216.8" in the third sentence.

§ 216.7 [Amended]

7. Section 216.7 is amended by removing "BDC" and inserting "DOC" in its place, and removing "FPA" and inserting in its place "FEMA."

8. Section 216.8 is amended by revising the DOE mailing address to read as follows:

§ 216.8 Communications.

* * * * *

Department of Energy, Procurement and Assistance Management Directorate, Attn: MA-422, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

[FR Doc. 86-5151 Filed 3-10-86; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9133]

Boise Cascade Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This Final Order requires a Boise, Idaho distributor of office products to cease accepting from any supplier a net price for office products that is lower than the price at which the supplier sells the products to other retailers with whom respondent competes. The Commission ruled that respondent violated the Robinson-Patman Act by knowingly receiving wholesaler discounts on goods it sold at retail in competition with other dealers.

DATES: Complaint issued April 23, 1980. Final Order issued Feb. 11, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Harold E. Kirtz, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., Room 1000, Atlanta, GA 30367. (404) 347-4836.

SUPPLEMENTARY INFORMATION: In the Matter of Boise Cascade Corporation, a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Discriminating In Price Under section 2, Clayton Act—Knowingly Inducing or Receiving Discriminating Price Under 2(f): § 13.855 Inducing and receiving discriminations. Subpart—Discrimination in Price Under Section 5, Federal Trade Commission Act: § 13.892 Knowingly inducing or receiving discriminating payments.

List of Subjects in 16 CFR Part 13

Office products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; Sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Before Federal Trade Commission

Final Order

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the matter of Boise Cascade Corp., a corporation.

[Docket No. 9133]

This matter has been heard by the Commission upon the appeal of respondent from the Initial Decision, and upon briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying opinion, the Commission has determined to affirm the Initial Decision. Accordingly, the appeal of Boise Cascade Corporation is denied, and

It is ordered that the following order to cease and desist be, and the same hereby is, entered:

I

The following definitions shall apply in this order:

A. "Boise Cascade" shall mean Boise Cascade Corporation, its divisions and subsidiaries, its officers, directors, agents and employees, and its succesors and assigns.

B. "Office Products" shall mean furniture and supplies commonly used in offices such as those which are sold or distributed by Boise Cascade Corporation's Office Products Division.

C. "Net Price" shall take into account all discounts, rebates, allowances, deductions or other terms and conditions of sale.

II

It is further ordered that Boise Cascade shall, in connection with the offering to purchase or purchasing in commerce, as "commerce" is defined in the Clayton Act, of office products for resale, cease and desist from directly or indirectly inducing, receiving or accepting from any seller a net price that Boise Cascade knows or has reason to know is below the net price at which office products of like grade and quality are being offered or sold by such seller to other purchasers with whom Boise Cascade is competing in the resale or distribution of said office products to end-users.

III

It is further ordered that Boise Cascade shall, within sixty (60) days of the effective date of this order, distribute a copy of this order to each of its suppliers of office products.

IV

It is further ordered that Boise Cascade shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of Boise Cascade, such as the creation or dissolution of subsidiaries or divisions, or any other change in the corporation, which may affect compliance obligations arising out of the order.

V

It is further ordered that Boise Cascade shall, within ninety (90) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner in which it has complied with this order and shall file such other reports as the Commission may from time to time require to assure compliance with the terms and conditions of this order.

Issued: February 11, 1986.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-5226 Filed 3-10-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint, Initial Decision and Opinion of the Commission are filed with the original documents.

16 CFR Part 13

[Docket 9183]

The Electrical Bid Registration Service of Memphis, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This Final Order requires a Memphis, Tenn. bid depository set up by electrical subcontractors to cease taking disciplinary action against firms that negotiate prices after bidding is closed or that accept a contract at a price other than that filed with the registry. Additionally, respondents may not require firms using the registry to deal only with other registry participants and cannot restrict in any way negotiations between electrical subcontractors and general contractors. Further, respondents are required to reinstate any firm it suspended for violation of the illegal rules and remove the illegal provisions from its by-laws or other rules.

DATES: Complaint issued Aug. 6, 1984. Final Order issued Feb. 12, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Truett Honeycutt, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., Room 1000, Atlanta, GA 30367. (404) 347-4836.

SUPPLEMENTARY INFORMATION: In the Matter of The Electrical Bid Registration Service of Memphis, Inc., a corporation, and C.H. Dennis, Jr., individually and as an officer and director of said corporation, and James L. Overton, Wayne A. Allen, and Jack Gross, individually and as directors of said corporation, and The National Electrical Contractors Association, Memphis Chapter, a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.350 Customers or prospective customers; § 13.367 Members. Subpart—Combining or Conspiring: § 13.388 To control allocation and solicitation of customers; § 13.390 To control employment practice; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-60 Release of general, specific or contractual constrictions, requirements, or restraints. Subpart—Cutting Off Access To Customers or Market: § 13.570 Interfering with competitors' bids or price quotations; § 13.580 Organizing and controlling seller-suppliers.

List of Subjects in 16 CFR Part 13

Electrical subcontractors, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. 9183]

Final Order

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the Matter of The Electrical Bid Registration Service of Memphis, Inc., a corporation, and C.H. Dennis, Jr., individually and as an officer and director of said corporation, and James L. Overton, Wayne A. Allen, and Jack Gross, individually and as directors of said corporation, and the National Electrical Contractors Assoc., Memphis Chapter, a corporation.

The Administrative Law Judge filed his Initial Decision in this matter on November 21, 1985, finding the corporate respondents Electrical Bid Registration Service of Memphis, Inc., and National Electrical Contractors Association, Memphis Chapter, Inc. to have violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by engaging in acts and practices as alleged in the complaint.

On December 11, 1985, the Respondents filed a notice of their intention to appeal the Initial Decision. That notice was withdrawn on January 10, 1986. Counsel Supporting the Complaint filed a notice of intention to appeal the Initial Decision on December 13, 1985, but withdrew their notice on January 8, 1986.

The Commission has determined that the case should be placed on its own docket for review and that the Initial Decision, with the exception of Finding 56 and the associated discussion, should become effective as the decision of the Commission. Accordingly,

It is ordered that the Initial Decision, except as noted above, and the Order contained therein shall become effective on February 12, 1986.

By the Commission. Acting Chairman Calvani would not have placed this matter on the Commission's docket for review and would have allowed the Initial Decision in its entirety to become effective as provided in § 3.51(a) of the Commission's Rules. The Commission having determined to take this procedural step, he concurs in the issuance of the Order contained in the Initial Decision.

Issued: February 12, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86-5229 Filed 3-10-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and Initial Decision are filed with the original documents.

16 CFR Part 13

[Docket No. C-3182]

Health Care Management Corp. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Columbus, Ga. owner and operator of North Mobile Community Hospital near Mobile, Ala., and the hospital's medical staff, among other things, to cease imposing unlawful restrictions relating to the practice of podiatry at the hospital. The hospital and its staff are prohibited from imposing such restrictions by not enacting any bylaw or policy that would have the effect of: (1) Coercing or intimidating any staff member not to co-admit podiatrists' patients; (2) Requiring an amount of residency training for podiatrists that is not reasonably related to legitimate quality-of-care grounds; or (3) Prohibiting podiatrists with hospital privileges from attending medical staff meetings.

DATE: Complaint and Order issued Feb. 20, 1986[1].

FOR FURTHER INFORMATION CONTACT: Paul K. Davis, Director, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Atlanta, GA 30367 (404) 881-4836.

SUPPLEMENTARY INFORMATION: On Tuesday, Oct. 15, 1985, there was published in the **Federal Register**, 50 FR 41693, a proposed consent agreement with analysis In the Matter of Health Care Management Corporation, a corporation, and Medical Staff of North Mobile Community Hospital, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting and abetting unfair or unlawful act or practice. Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.405 To discriminate unfairly or restrictively, in general; § 13.450 To limit distribution or dealing to regular, established or acceptable channels or classes; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Hospital privileges, Podiatrists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86–5225 Filed 3–10–86; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3181]

Sunbeam Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Pittsburgh, Pa. marketer of Oster brand air cleaners, among other things, to cease misrepresenting the ability of air cleaners to eliminate or help eliminate indoor pollutants. Additionally, respondent is required to have competent and reliable substantiation for all future claims about its products' efficacy.

DATE: Complaint issued Feb. 11, 1986. Order issued Feb. 11, 1986 [1].

FOR FURTHER INFORMATION CONTACT: Janet Grady, Director, San Francisco Regional Office, Federal Trade Commission, Room 12470, Box 36005, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556–1270.

SUPPLEMENTARY INFORMATION: On Friday, Nov. 29, 1985, there was published in the **Federal Register,** 50 FR 49058, a proposed consent agreement with analysis In the Matter of Sunbeam Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.05–5 Knowingly by advertising agent; § 13.170 Qualities or properties of product or service; § 13.170–16 Cleansing, purifying; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: §13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1762 Tests, purported. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Household air cleaning appliances, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86–5226 Filed 3–10–86; 8:45 am]

BILLING CODE 6750–01–M

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[1] Copies of the Complaint and the Decision and Order are filed with the original document.

DEPARTMENT OF THE TREASURY
Customs Service

19 CFR Part 12

[T.D. 86–57]

Customs Regulations Amendment Relating to Textiles and Textile Products

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the importation of textiles and textile products into the U.S. Due to recent changes in the Tariff Schedules of the United States resulting from Presidential Proclamation 5365, dated August 30, 1985, effectuating the U.S.-Israel Free Trade Area agreement, certain general headnotes upon which portions of the Customs Regulations are predicated no longer exist. Accordingly, this document revises the Customs Regulations to reflect those changes.

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Phil Robins, Classification and Value Division (202–566–8181);

Operations Aspects: Bill Marchi, Duty Assessment Division (202–566–2957); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

By T.D. 85–38, published in the **Federal Register** on March 5, 1985 (50 FR 8710), § 12.130, Customs Regulations (19 CFR 12.130), was amended to provide specific regulatory authority mandating that "country of origin" rules be applied in determining whether textiles or textile products are subject to any of the multilateral or bilateral textile agreements negotiated by the U.S. pursuant to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Section 12.130(a), Customs Regulations, now states that textiles or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), include merchandise subject to General Headnotes 3(g)(iii)(C)(1), 3(g)(iii)(C)(2), and 3(g)(iii)(E) of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). In addition, § 12.130(f), Customs Regulations, states that all importations of textiles and textile products covered by General Headnotes 3(g)(iii)(C)(2) or 3(g)(iii)(E), TSUS, shall be accompanied by the appropriate declaration(s) of the manufacturer, producer, exporter or

importer of the textiles or textile products.

Pursuant to the U.S.-Israel Free Trade Area (FTA) agreement, which became effective September 1, 1985, certain changes were made to the TSUS; including the deletion of General Headnotes 3(g)(iii)(C)(1), 3(g)(iii)(C)(2), and 3(g)(iii)(E).

The FTA agreement is a program providing for free or reduced rates of duty for merchandise from Israel to stimulate trade between Israel and the U.S. This program was authorized by §§ 401–405 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) and implemented by the U.S.-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note) and Presidential Proclamation 5365 of August 30, 1985, published in the **Federal Register** on September 5, 1985 (50 FR 36220). On January 1, 1995, all currently eligible reduced rate importations from Israel will be accorded duty-free treatment.

The deletion of the above mentioned general headnotes from the TSUS necessitates their deletion from § 12.130. These are nonsubstantive changes which will merely conform the Customs Regulations to the TSUS.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), do not apply.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as this amendment merely conforms the Customs Regulations to the TSUS, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Drafting Information

The principal author of the document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports, Textile products and apparel.

Amendment to the Regulations

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read as follows. All other statutory authority cited at the end of various sections in Part 12 remains the same.

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624.

2. Paragraph (a) and the introductory text of paragraph (f) of § 12.130 are revised to read as follows:

§ 12.130 Textiles and textile products country of origin.

(a) *General.* Textiles or textile products subject to § 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), include merchandise which is classifiable under the provisions contained in Schedule 3, Subpart 6D of Schedule 6, Part 1 of Schedule 7, and Subparts 4A, 5D, 5E, 7B, 12C, and 13B of Schedule 7 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202); provided that such merchandise:

(1) Is in chief value of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof; or

(2) Contains 50 percent or more by weight of cotton or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement; or

(3) Contains 17 percent or more by weight of wool; or

(4) If in chief value of textile fibers or textile materials, contains a blend of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof, which fibers, in the aggregate amount to 50 percent or more by weight of all component fibers.

* * * * *

(f) *Declaration of manufacturer, producer, exporter, or importer of textiles and textile products.* All importations of textiles and textile products subject to section 204, Agricultural Act of 1956, as amended, shall be accompanied by the appropriate declaration(s) set forth in paragraph (f)(1) or (f)(2) of this section. Textiles or textile products subject to section 204 include that merchandise described in § 12.130(a). All importations of textiles and textile products not subject to section 204 shall be accompanied by the declaration set forth in paragraph (f)(3) of this section. The declaration(s) shall be filed with the entry. The declaration(s) may be prepared by the manufacturer, producer, exporter or importer of the textiles and textile products. If multiple manufacturers, producers, or exporters are involved, a separate declaration prepared by each may be filed. A separate declaration may be filed for each invoice which is presented with the entry. The determination of country of origin, other than as set forth in paragraph (g) of this section, will be based upon information contained in the declaration(s). The declaration(s) shall not be treated as a missing document for which a bond may be filed. Entry will be denied unless accompanied by a properly executed declaration(s)

* * * * *

Approved: February 24, 1986.

William Von Raab,

Commissioner of Customs.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86–5216 Filed 3–10–86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Dichlorophene and Toluene Capsules

Correction

In FR Doc. 85–28631 appearing on page 49537 in the issue of Tuesday, December 3, 1985, make the following correction: The Effective Date should read "December 13, 1985".

BILLING CODE 1505-01-M

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21 CFR Part 579

[Docket No. 84F-0441]

Food Additives; Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food; Ionizing Radiation for Treatment of Laboratory Animal Diets

Correction

In FR Doc. 86–3501 beginning on page 5992 in the issue of Wednesday, February 19, 1986, make the following correction on page 5993 in the first column:

In the regulatory text, the section heading "§ 570.22" should read "§ 579.22".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-86-1277; FR-2229]

Mortgage Insurance, Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on section 232 (Mortgage Insurance for Nursing Homes) and on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 10.50 percent to 9.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 4166) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs—Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before March 3, 1986, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before March 3, 1986, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after March 3, 1986, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new

rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: February 28, 1986.

Susan K. Zagame,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-5278 Filed 3-10-86; 8:45 am]

BILLING CODE 4210-27-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-8

[FIRMR Amdt. 6]

Implementation of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED-STDS), and Joint FIPS/FED-STDS in the FIRMR

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation updates implementation provisions for a number of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED-STDS), and Joint Federal Information Processing Standards/Federal Telecommunications Standards (FIPS/FED-STDS) to provide associated standard terminology that shall be used in solicitation documents, including requirements documents, where the standard is applicable. Some general language has been added to more fully explain the kinds and purpose of standards and how copies may be obtained. Additionally, clarification has been added to explain that if a FIPS waiver or FED-STD exception is obtained, a deviation from the FIRMR is not required. The intended effect of this regulation is to enhance economy and efficiency in the acquisition of automatic data processing/telecommunications equipment and services.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Phillip R. Patton, Policy Branch (KMPP), Information Resources Management Service, telephone (202) 566-0194 or FTS 566-0194.

SUPPLEMENTARY INFORMATION: (1) Among the changes is an update of FIPS PUB 1-1 to FIPS PUB 1-2 which consolidates FIPS PUBS 1-1, 7, 15, 35, and 36. FIPS PUB 1-2 specifies the codes and character sets for use in Federal information processing systems, communication systems, and associated equipment. This consolidation reduces the number of closely related FIPS PUBS in the family of standards based upon the voluntary American National Standard Code for Information Interchange. Other revisions implement new FIPS PUB 2-1, 8-5, and 33-1. FIPS PUBS 107, 108, and 111 and FED-STDS 1015, 1026 and 1028 are also implemented. FIPS PUB 98 is suspended indefinitely with the implementing text being removed with a note of explanation.

(2) The changes being made by this issuance are explained in the following paragraphs.

a. Section 201-8.100-1 is revised to explain more completely what is provided in the standards index.

b. Section 201-8.101-1 is revised to separate regulatory coverage on implementation of standards from that of deviations.

c. Section 201-8.101-2 is amended to state that if a waiver is obtained from the use of an individual FIPS, a FIRMR deviation is not required. Also, a statement is added that if specifications for waiver approval are not included in the FIPS, waiver approval responsibility rests with the head of the agency.

d. Section 201-8.101-3 is amended to state that if an exception is obtained from the use of an individual FED-STD, a deviation from the FIRMR is not required.

e. Section 201-8.101-4 is added to provide separate coverage of deviations from that of standards implementation and to state that if a waiver or exception is obtained from the use of an individual standard, a deviation from the FIRMR is not required.

f. Section 201-8.102 is amended to advise agencies that Federal standards for information resources are issued under authorities and procedures set forth in this section.

g. Section 201-8.102-1 is amended to advise agencies that FIPS PUBS fall into two general categories, FIPS PUB Standards and FIPS PUB Guidelines. It further advises that qualifications concerning use and special implementing information are explained where applicable in the FIPS PUBS.

h. Section 201-8.102-2 is revised to state that FED-STDS are developed by the National Communication System under delegation from GSA. It also advises DoD activities and contractors how and where they may obtain copies of the standards.

i. Section 201-8.103 is revised to replace MIL-STD-188-120 with FED-STD 1037 as the official authority for Federal telecommunications standards terms and definitions.

j. Section 201-8.104 is amended to provide that if a FIPS PUB is waived or a FED-STD is expected relative to a specific requirement, the agency is not required to apply the standard to the acquisition nor is a deviation from the FIRMR required.

k. Section 201-8.105-1 is revised to reflect that FIPS PUB 1-1 has been updated to FIPS PUB 1-2 by consolidating and superseding FIPS PUBS 1-1, 7, 15, 35, and 36.

l. Section 201-8.105-2 is revised to reflect that FIPS PUB 2 is being updated to FIPS PUB 2-1 by superseding FIPS PUB 7. FIPS PUB 7 was referred to in FIPS PUB 2 as a future FIPS PUB and was subsequently developed to provide relevant implementation guidance for FIPS PUB 2.

m. Section 201-8.105-4 is revised and reserved reflecting the deletion of FIPS PUB 7 that is superseded by FIPS PUB 1-2.

n. Section 201-8.105-7 is revised and reserved reflecting the deletion of FIPS PUB 15 which is superseded by FIPS PUB 1-2.

o. Section 201-8.105-12 is revised to reflect that FIPS PUB 33 is being updated to FIPS PUB 33-1 by replacing American National Standard Institute X3.45-1974, Character Set for Handprinting, with X3.45-1982, Character Set for Handprinting. The updated standard incorporates editorial and technical modifications that are not substantive.

p. Section 201-8.105-13 is revised and reserved reflecting the deletion of FIPS PUB 35 that is superseded by FIPS PUB 1-2.

q. Section 201-8.105-14 is revised and reserved reflecting the deletion of FIPS PUB 36 that is superseded by FIPS PUB 1-2.

r. Section 201-8.105-18 is revised to change the reference to FIPS PUB 1-1 to FIPS PUB 1-2.

s. Section 201-8.105-30 is revised to change references to FIPS PUB 1-1 to FIPS PUB 1-2 and delete references to FIPS PUB 35.

t. Sections 201-8.105-31 and 201-8.105-32 are amended to remove the words, "Federal Standard," from the sections' captions.

u. Section 201-8.105-33 is revised to change the references to FIPS PUB 1-1 to FIPS PUB 1-2.

v. Section 201-8.105-35 is added by incorporating FIPS PUB 107, Local Area Networks: Baseband Carrier Sense

Multiple Access with Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol.

w. Section 201–8.105–36 is added by incorporating FIPS PUB 108, Alphanumeric Computer Output Microform Quality Test Slide.

x. Section 201–8.105–37 is added by incorporating FIPS PUB 111, Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces).

y. Section 201–8.106–6 is revised by deleting the existing text, reserving the section, and adding a note to explain that implementation of FIPS 98, Message Format for Computer Based Message Systems, has been suspended indefinitely pending its revision.

z. Sections 201–8.107–1, 201–8.107–2, and 201–8.107–3 are amended to remove the words, "Federal Standard," from the sections' captions.

aa. Section 201–8.109 is amended to state that if the entire Federal Standard language specification has been waived, no compiler validation is required for that acquisition.

bb. Section 201–8.110–1 is amended to revise paragraph (b) that updates FIPS PUB 8–4 to FIPS PUB. 8–5 and add to its title the parenthetical, "(Including CMSAs, PMSAs and NECMAs)."

cc. Section 201–8.112–8 is added to incorporate FED–STD 1015, Telecommunications: Analog to Digital Conversion of Voice by 2400 Bit/Second Linear Predictive Coding.

dd. Section 201–8.112–12 is revised to add FED–STD 1026, Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Communications.

ee. Section 201–8.112–14 is revised by relocating coverage on FED–STD 1030A to Section 201–8.112–16 and replacing it with coverage on FED–STD 1028.

ff. Section 201–8.112–16 is revised by relocating coverage on FED–STD 1061 to Section 201–8.112–25 and replacing it with coverage on FED–STD 1030A.

gg. Section 201–8.112–17 is revised by relocating coverage on FED–STD 1062 to Section 201–8.112–26 and reserving this section.

hh. Section 201–8.112–18 is revised by relocating coverage on FED–STD 1063 to Section 201–8.112–27 and reserving this section.

ii. Section 201–8.112–19 through 201–8.112–24 are established and reserved.

jj. Section 201–8.112–25 is established to relocate the coverage on FED–STD 1061.

kk. Section 201–8.112–26 is established to relocate the coverage on FED–STD 1062.

ll. Section 201–8.112–27 is established to relocate the coverage on FED–STD 1063.

mm. Section 201–8.113–2 is revised to change the references to FIPS PUB 1–1 to FIPS PUB 1–2.

nn. Section 201–8.113–3 is revised to change the references to FIPS PUB 1–1 to FIPS PUB 1–2.

oo. Section 201–8.113–4 is revised to change the references to FIPS PUB 1–1 to FIPS PUB 1–2 and delete the reference to FIBS PUB 15.

(2) The General Services Administration (GSA) has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management, acquisition, and use regulation that will have little or no net cost effect on society.

Lists of Subjects in 41 CFR Chapter 201

Computer technology, Telecommunications, Information resources activities, Standards for information resources.

Chapter 201 of Tile 41 of the Code of Federal Regulation is amended as set forth below.

PART 201-8—IMPLEMENTATION AND USE OF FEDERAL STANDARDS

1. The table of contents for Part 201–8 is changed by amending, reserving, or adding the following entries and the authority citation for the part continues to read as follows:

Authority: Sec. 205(c), 63 stat. 390; 40 U.S.C. 486(c).

2. Section 201–8.100–1 is revised to read as follows:

§ 201.8.100–1 Standards Index.

GSA publishes periodically, usually annually, a handbook titled, the ADP and Telecommunications Standards Index. It provides guidance to agencies on the application of standards in the acquisition and use of ADP and telecommunications equipment and services. it specifies standard terminology for use in requirements documents, including solicitations, for each standard. The handbook also provides status on standards under development. Its availability and ordering information is provided through the issuance of a FIRMR bulletin.

3. Section 201–8.101–1 is revised to read as follows:

§ 201–8.101–1 Implementation.

Agencies shall implement Federal standards for the acquisition and use of automatic data processing and telecommunications equipment, services and related software as prescribed by this subpart.

4. Section 201–8.101–2 is revised to read as follows:

§ 201–8.101–2 Waiver to a Federal Information Processing Standard (FIPS).

Waiver procedures, together with exemption and waiver approval authority from the mandatory use of a specific FIP, are contained in each FIPS. If specifications for waiver approval are not included in the FIPS, waiver approval responsibility rests with the head of the agency. Exceptions, waiver authority approval, and criteria upon which to base exemptions and waiver approval are explained where applicable. For some standards, a waiver approval response from the Secretary of Commerce to an agency request for waiver is required before acquisition action can commence. If a waiver is obtained from the use of an individual FIPS, a deviation from the FIRMR is not required.

5. Section 201–8.101–3 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 201–8.101–3 Exception to a Federal Telecommunication Standard (FED–STD).

(a) Exceptions to the mandatory use of a FED–STD required by this Subpart 201–8 may be granted by GSA only upon submission of adequate justification to GSA. If an exception is obtained from the use of an individual FED–STD, a deviation from the FIRMR is not required. Circumstances under which exceptions may be granted include, but are not limited to, the following—

* * * * *

6. Section 201–8.101–4 is added to read as follows:

§ 201–8.101–4 Deviations.

Deviations to the implementation of standards as prescribed by this subpart shall be handled as provided in Subpart 201–1.4. If a waiver or exception is obtained from the use of an individual standard, a deviation from the FIRMR is not required.

7. Section 201–8.102 is revised to read as follows:

§ 201–8.102 Types of Federal standards.

Federal standards for information resources are adopted and issued under authorities and procedures set forth in the following subsections of this § 201–8.102. These standards are applied and implemented into Federal information resources activities by this Subpart 201.8.1 by GSA. Federal standards discussed in this part are categorized as Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED–STDS), or as Joint Federal Information Processing and Federal Telecommunications Standards (FIPS/FED-STUDS). Each of these standard categories is described in detail below.

8. Section 201–8.102–1 is revised to read as follows:

§ 201–8.102–1 Federal Information Processing Standards Publications (FIPS PUBS).

(a) Federal Information Processing Standards Publications (FIPS PUBS) are official Federal Government publications relating to standards adopted and issued under the provisions of section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(f)), and Executive Order 11717, dated May 9, 1973 (38 FR 12315, May 11, 1973). FIPS PUBS, issued by the National Bureau of Standards (NBS,) fall into general categories, FIPS PUB Standards and FIPS PUB Guidelines. FIPS PUB Guidelines are informational documents whereas FIPS PUB Standards are mandatory.

(b) Qualifications concerning use and special implementing information are explained where applicable.

(c) Requests for FIPS PUBS (except for Department of Defense (DoD) activities and DoD contractors), including discounts for quantity orders, should be sent to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161 (Telephone (703) 487–4650 or FTS 737–4650).

(d) Requests for FIPS PUBS subscriptions should be sent to: Subscriptions, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161 (Telephone (703) 487–4630, or FTS 737–4630).

(e) Requests from Department of Defense (DoD) activities and DoD contractor, should be sent to: Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

(1) Requests should include a complete mailing address.

(2) Requests from DoD contractors must include the solicitation or contract number where applicable.

(3) List requested documents in alphabetical order and indicate quantity of each document.

(4) Telephone requests may be made by calling (215) 697–3321 or AUTOVON 442–3321.

9. Section 201–8.102–2 is revised to read as follows:

§ 201–8.102–2 Federal Telecommunications Standards (FED-STDS).

(a) Federal Telecommunications Standards (FED-STDS) are official Federal Government publications relating to standards adopted and issued under the provisions of section 206 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 390, as amended (40 U.S.C. 487). These Federal publications are issued by GSA and collectively constitute the Federal Supply Class (FSC) of "Telecommunications" in the Federal Standards Index. These standards are developed by the National Communications System under delegation from the GSA.

(b) Federal agencies may obtain one copy of each FED-STD free of charge. Copies are available to the public on a cost-reimbursable basis. Requests for these publications, specifying the FED-STD number, should be sent to: General Services Administration (WFSI), Washington, DC 20407 (Telephone (202) 472–2205 or FTS, 472–2205).

(c) Requests from Department of Defense (DoD) activities and DoD contractors, should be sent to: Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

(1) Requests should include a complete mailing address.

(2) Requests from DoD contractors must include the solicitation or contract number where applicable.

(3) List requested documents in alphabetical order and indicate quantity of each document.

(4) Telephone requests may be made by calling (215) 697–3321 or AUTOVON 442–3321.

10. Section 201–8.103 is revised to read as follows:

§ 201–8.103 Categories of Federal standards.

The following categories of Federal standards are implemented by this Subpart 201–8.1. For terms not defined in an individual FIPS PUB, see FIPS PUB 11–2, Guidelines: American National Standard Vocabulary for Information Processing Systems, available as indicated in § 201–8.102–1(d). Federal telecommunications standards terms and definitions are defined in FED–STD 1037, Glossary of Telecommunications Terms, available as indicated in § 201–8.102–2(d).

11. Section 201–8.104 is amended by revising paragraph (a) to read as follows:

§ 201–8.104 Application of Standards to requirements.

(a) FIPS PUBS and FED–STDS, unless waived or excepted, shall be applied to ADP and telecommunication acquisitions. Standard terminology for use in requirements documents, including solicitations for offers, is provided for each standard implemented

by GSA in the subsections of this Subpart 201–8.1 entitled with FIPS PUB, FED–STD, or join FIPS/FED–STD numbers. When a FIPS PUBS is walved or a FED–STDS is excepted with respect to a specific requirement, the agency is not required to apply the standard to the acquisition. No deviation from the FIRMR is required (see §§ 201–8.101–2 and 201–8.101–3).

* * * * *

12. Section 201–8.105–1 is revised to read as follows:

§ 201–8.105–1 FIPS PUB 1–2, Code for Information Interchange, Its Representations, Subsets, and Extensions.

(a) FIPS PUB 1–2 promulgates the American National Standard Code for Information Interchange (ASCII) and specifies the code and character set for use in Federal information processing systems, communications systems, and associated equipment.

(b) The standard terminology for use in requirements documents, including solicitations, is:

ASCII System Requirements (DEC 85 FIRMR)

The system, upon receiving a hardware or software command, must accept data on magnetic tape, paper tape, or any other input/output media covered by an approved Federal Information Processing Standards Publication (FIPS PUB) in ASCII code and collating sequence prescribed in FIPS PUB 1–2 and in the format prescribed in FIPS PUBS 2–1, 3–1, 25, 50, or other applicable FIPS PUBS. Such data may be translated, if necessary, into a form that the equipment can internally process, provided that, upon receiving a hardware or software command, the equipment can produce processed data on magnetic tape, paper tape, printers, and other output media in the ASCII code and collating sequence prescribed in FIPS PUB 1–2 and in the format prescribed in FIPS PUBS 2–1, 3–1, 25, 50, or other applicable FIPS PUBS.

(End of requirement statement)

13. Section 201–8.105–2 is revised to read as follows:

§ 201–8.105–2 FIPS PUB 2–1, Perforated Tape Code for Information Interchange.

(a) FIPS PUB 2–1 specifies the representation of the ASCII code and format on perforated tape to be used in Federal information processing systems, communication systems, and associated equipment.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Punched Paper Tape Readers and Punches (DEC 85 FIRMR)

Punched paper tape equipment must be capable of reading and punching in the prescribed ASCII code and format specified in FIPS PUBS 1–2 and 2–1.

(End of requirement statement)

§ 201–8.105–4 [Reserved]

14. Section 201–8.105–4 is removed and reserved as follows:

§ 201–8.105–7 [Reserved]

15. Section 201–8.105–7 is removed and reserved as follows:

16. Section 201–8.105–12 is revised to read as follows:

§ 201–8.105–12 FIPS PUB 33–1, Character Set for Handprinting.

(a) FIPS PUB 33–1 announces the adoption of the American National Standard X3.45–1982, Character Set for Handprinting, as a Federal standard. The standard provides the description, scope, and application rules for a character set for handprinting.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Reading Handprinted Material (DEC 85 FIRMR)

All applicable Optical Character Recognition (OCR) equipment or services which result from this requirement and which are capable of reading handprinted material must comply with FIPS PUB 33–1. The applicable services include data preparation and processing of information represented in OCR form.

(End of requirement statement)

§ 201–8.105–13 [Reserved]

17. Section 201–8.105–13 is removed and reserved as follows:

§ 201–8.105–14 [Reserved]

18. Section 201–8.105–14 is removed and reserved as follows:

19. Section 201–8.105–18 is amended by revising paragraph (b) to read as follows:

§ 201–8.105–18 FIPS PUB 52, Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (0.250 in), 63 BPMM (1600 BPI), Phase Encoded.

* * * * *

(b) The standard terminology for use in requirements documents, including solicitations, is:

Recorded Characteristics—63 BPMM 6.30 mm Tape (DEC 85 FIRMR)

All magnetic tape cartridge recording and reproducing equipment which results from this requirement and employs 6.30 mm (0.250 in) wide magnetic tape with one, two, or four independent serial data tracks at recording densities of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in the code and format as specified in FIPS PUB 1–2 and FIPS PUB 52.

(End of requirement statement)

20. Section 201–8.105–30 is revised to read as follows:

§ 201–8.105–30 FIPS PUB 86, Additional Controls for Use With American National Standard Code for Information Interchange.

(a) FIPS PUB 86 specifies a set of encoded control functions to supplement the basic control functions defined in FIPS PUB 1–2 to facilitate data interchange between data processing equipment and two-dimensional, character-imaging, input-output devices.

(b) The architectural assumptions for devices for use with FIPS PUB 86 are contained in American National Standard X3.64–1979, which is part of the FIPS PUB.

(c) The standard terminology for use in requirements documents, including solicitations, is:

Additional ASCII Controls for Character-Imaging ADP Equipment of Services (DEC 85 FIRMR)

All applicable ADP character-imaging equipment or services (e.g., interactive ADP terminals of the display and printer type, line printers, microfilm printers, typesetting composers, word processors, and related devices or services using such devices) must comply with the requirements set forth in FIPS PUB 86 when such equipment or services employ the character set and encoding conventions prescribed in FIPS PUB 1–2, employ primarily character-oriented controls, and are consistent with the architectural assumptions for devices in Appendix B, ANSI X3.64–1979. All ADP terminals that meet these conditions are included in this requirement if they contain alphanumeric keyboards and CRT displays or printers that may be used in any form of on-line interactive application or stand alone off-line data preparation. Computer resident control software may be used, but is not required, to implement specific features of FIPS PUB 86, unless specified elsewhere in this document [*insert reference here*].

(End of requirement statement)

21. Section 201–8.105–31 is amended by revising the section heading to read as follows:

§ 201–8.105–31 FIPS PUB 89, Optical Character Recognition (OCR) Character Positioning.

* * * * *

22. Section 201–8.105–32 is amended by revising the section heading to read as follows:

§ 201–8.105–32 FIPS PUB 91, Magnetic Tape Cassettes for Information Interchange, Dual Track, Complementary Return-to-Bias (CRB) Four-States Recording on 3.81 mm (0.150 in) Tape.

* * * * *

23. Section 201–8.105–33 is amended by revising paragraph (b) to read as follows:

§ 201–8.105–33 FIPS PUB 93, Parellel Recorded Magnetic Tape Cartridge for Information Interchange, 4 Track 6.30 mm (0.250 in), 63 BPMM (1600 BPI), Phase Encoded.

* * * * *

(b) The standard terminology for use in requirements documents, including solicitations, is:

Magnetic Tape Cartridge Equipment and Associated Software (DEC 85 FIRMR)

All magnetic tape cartridge recording and reproducing equipment which results from this requirement and employs 6.30 mm (0.250 in) wide magnetic tape with data recorded across four parallel tracks at recording densities of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in the code and format as specified in FIPS PUB 1–2 and FIPS PUB 93.

(End of requirement statement)

24. Section 201–8.105–35 is added to read as follows:

§ 201–8.105–35 FIPS PUB 107, Local Area Networks: Baseband Carrier Sense Multiple Access with Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol.

(a) FIPS PUB 107 applies to local area networks that employ the carrier sense multiple access with collision detection (CSMA/CD) access method where compatibility with the architecture of the ISO Reference Model for Open Systems Interconnection is required. The standard provides the mechanical, electrical, functional and procedural specifications and the link protocol required to establish physical connections to transmit bits and to send data link frames between nodes of a local area network. The local area network spans a local area with a baseband coaxial cable of up to 2500 meters in length, transmitting at 10 megabits per second.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Local Area Network Equipment and Services Employing CSMA/CD (DEC 85 FIRMR)

All local area network services and equipment employing CSMA/CD which result from this requirement shall provide the capability to transmit bits and to send data link frames between nodes in compliance with the requirements set forth in FIPS PUB 107.

(End of requirement statement)

25. Section 201–8.105–36 is added to read as follows:

§ 201–8.105–36 FIPS PUB 108, Alphanumeric Computer Output Microform Quality Test Slide.

(a) FIPS PUB 108 provides information necessary for the preparation of a test form slide to ensure the generation of quality microforms by computers. It should be used for the acquisition of test form slides procured to verify and monitor the quality of microforms generated by alphanumeric computer output microform devices.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Test Form Slides for Computer Output Microform Devices (DEC 85 FIRMR)

All test form slides that verify and maintain the quality of microforms generated by computer output microform devices offered as a result of this requirement must comply with FIPS PUB 108.

(End of requirement statement)

26. Section 201–8.105–37 is added to read as follows:

§ 201–8.105–37 FIPS PUB 111, Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces).

(a) FIPS PUB 111 defines the mechanical, electrical, and functional requirements for attaching disk drives to their control unit. This resulting interface will facilitate the interconnection of disk drives and the control unit, as part of a storage module subsystem, providing a common interface specification for both controller and disk subsystems that are employed with small to medium sized computer systems which are generally excluded from the provisions of FIPS 60–2, 61–1, 63–1, and 97.

(b) This standard adopts American National Standard X3.91M–1982, Enhanced Storage Module Interfaces, and may be used as an alternative to FIPS 60–2, FIPS 61–1, and either FIPS 63–1 or FIPS 97 for those instances when FIPS 60–2 would otherwise be applicable. When FIPS 111 is employed, FIPS 60–2 need not be used. However, any waiver of FIPS 60–2 is also a waiver of FIPS 111.

(c) While it is not economical or practical to require extensive verification of storage module drives (SMD) products offered to the Government, procuring agencies may, at their option, require that correct operation of all interfaces conforming to FIPS 111 be verified through demonstration or other means acceptable to the Government prior to acceptance of applicable equipment. In special cases, NBS may assist agencies in evaluating conformance to the SMD interface. Arrangements for verification assistance can be made by contacting the Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899.

(d) The standard terminology for use in requirements documents including solicitations, is:

Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces) (DEC 85 FIRMR)

Unless a waiver is granted following the waiver procedures specified in FIPS PUB 111, or unless this requirement requires conformance with FIPS PUB 60–2, ADP systems and disk storage subsystems that may result from this requirement must conform to FIPS PUB 111. Waivers applicable to this requirements document are identified elsewhere in this document. At the option of the Government, the correct operation of these systems' conforming interfaces must be verified before the acceptance of all applicable ADP equipment.

(End of requirement statement)

27. Section 201–8.106–6 is removed and reserved and a note of explanation is added to read as follows:

§ 201–8.106–6 [Reserved]

Note.—The Secretary of Commerce has decided to suspend the implementation of FIPS 98, Message Format for Computer Based Message Systems, indefinitely pending its revision (see 50 FR 9480, March 8, 1985).

28. Section 201–8.107–1 is amended by revising the section heading to read as follows:

§ 201–8.107–1 FIPS PUB 21–1, COBOL.

* * * * *

29. Section 201–8.107–2 is amended by revising the section heading to read as follows:

§ 201–8.107–2 FIPS PUB 68, Minimal BASIC.

* * * * *

30. Section 201–8.107–3 is amended by revising the section heading to read as follows:

§ 201–8.107–3 FIPS PUB 69, FORTRAN.

* * * * *

31. Section 201–8.109 is amended by revising paragraph (c) to read as follows:

§ 201–8.109 Validation of compilers.

* * * * *

(c) Federal agencies shall use these test results to confirm that the compiler meets the language elements specifications of that Federal Standard. When an agency has indicated in a requirements document that a waiver applies to a Federal Standard language specification, only the portions of the language that have been waived are

excluded from the validation requirements. If the entire Federal Standard language specification has been waived, there is no compiler validation requirement for that acquisition action.

* * * * *

32. Section 201–8.110–1 is amended by revising paragraph (b) to read as follows:

§ 201–8.110–1 FIPS PUBS applicable to the interchange of machine processable data between and among agencies.

* * * * *

(b) The standard terminology for use in requirements documents, including solicitations, is:

Interchange of Machine Processable Data (DEC 85 FIRMR)

All application programs resulting from this requirement that have been identified as those that will be interchanged, or that will record data that will be interchanged with Federal agencies, State and local governments, industry, and the public must implement the following applicable approved Federal Information Processing Standards (FIPS):

FIPS PUB 4, Calendar Date.
FIPS PUB 5–1, States and Outlying Areas of the United States.
FIPS PUB 6–3, Counties and County Equivalents of the States of the United States and the District of Columbia.
FIPS PUB 8–5, Metropolitan Statistical Areas Including CMSAs, PMSAs and NECMAs).
FIPS PUB 9, Congressional Districts of the United States.
FIPS PUB 10–3, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.
FIPS PUB 58, Representations of Local Time of the Day for Information Interchange.
FIPS PUB 59, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange.
FIPS PUB 66, Standard Industrial Classification (SIC) Codes.
FIPS PUB 70, Representation of Geographic Point Locations for Information Interchange.
FIPS PUB 95, Code for the Identification of Federal and Federally-Assisted Organizations.
FIPS PUB 103, Codes for the Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas.

(End of requirement statement)

33. Section 201–8.112–8 is added to read as follows:

§ 201–8.112–8 FED–STD 1015, Telecommunications: Analog to Digital Conversion of Voice by 2400 Bit/Second Linear Predictive Coding.

(a) FED–STD 1015 specifies requirements relating to the conversion of analog voice to 2400 bit/second digitized voice by Linear Predictive Coding (LPC–10) and reconversion back to analog voice. It applies to all synchronous (not packetized) 2400 bit/second digitized voice telecommunications equipment procured or leased.

(b) The standard terminology for use in requirements documents, including solicitations, is:

2400 Bit/Second Digitized Voice Telecommunications Equipment (DEC 85 FIRMR)

All synchronous (not packetized) 2400 bit/second digitized voice telecommunications equipment offered as a result of this requirement shall be capable of Linear Predictive Coding (LPC–10) operation in conformance with FED–STD 1015.

(End of requirement statement)

34. Section 201–8.112–12 is revised to read as follows:

§ 201–8.112–12 FED–STD 1026, Telecommunications: Interoperability and Security Requirements for use of the Data Encryption Standard in the Physical Layer of Data Communication.

(a) The purpose of FED–STD 1026 is to facilitate the interoperation of Government data communication facilities systems and data that require cryptographic protection using the Data Encryptions Standard (DES) algorithm.

(b) FED–STD 1026 specifics interoperability and security related requirements using encryption at the Physical Layer of the International Standards Organization's (ISO) Open Systems Interconnection (OSI) Reference Model (International Standard 7498) in telecommunications systems conveying Automatic Data Processing (ADP) and/or narrative text information. The algorithm used for encryption is the Data Encryptions Standard (DES), FIPS PUB 46, Data Encryptions Standard. Requirements contained in this standard relate to the interoperation of Physical Layer Data Encryptions Equipment, or their interoperation with associated Data Terminal Equipment of Data Circuit-terminating Equipment.

(c) Additional security requirements, not directly related to interoperatibility, are contained in FED–STD 1027, Telecommunications: General Security Requirements for Equipment Using the Data Encryptions Standard (DES). The DES algorithm is specified in FIPS PUB 46.

(d) In Physical Layer encryption, all of the Physical Layer Service Data Unit is encrypted except the START and STOP bits during asynchronous operation, and the parity bits when parity is restored.

(e) The standard terminology for use in requirements documents, including solicitations, is:

Cryptographic Components, Equipment Systems, and Services (DEC 85 FIRMR)

All applicable DES cryptographic components, equipment or services used for encryption of ADP and/or narrative text information in the Physical Layer data communications using the Data Encryptions Standard (DES) algorithm must comply with the requirements specified in FED–STD 1026. The Physical Layer is further defined in International Standard 7498, Open Systems Interconnection Reference Model.

(End of requirement statement)

35. Section 201–8.112–14 is revised to read as follows:

§ 201–8.112–14 FED–STD 1028, Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment.

(a) FED–STD 1028 specifies interoperability and security related requirements for use of encryption with the International Telegraph and Telephone Consultative Committee, (CCITT) Group 3-type facsimile equipment conveying Automatic Data Processing (ADP) and/or narrative text information. The algorithm used for encryption is the Data Encryption Standard (DES), FIPS–PUB 46, Data Encryption Standard. Requirements contained in this standard relate to the interoperation of DES Equipment, or their interoperation with associated CCITT Group 3 facsimile equipment. Group 3 facsimile apparatus are described in Electronic Industries Association Standard RS–465.

(b) Additional security requirements, not directly related to interoperability, are contained in FED–STD 1027, Telecommunications: General Security Requirements for Equipment Using the Data Encryption Standard (DES). The DES algorithm is specified in FIPS PUB 46.

(c) Additional requirements for interoperability and security at the physical layer are contained in FED–STD 1026, Telecommunications: Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Communications.

(d) The standard terminology for use in requirements documents, including solicitations, is:

CCITT Group 3 Facsimile Equipment, Systems, and Services (DEC 85 FIRMR)

All applicable cryptographic components, equipment or services used for the encryption of documents transmitted by CCITT Group 3-type facsimile equipment using the Data Encryption Standard (DES) algorithm must comply with the requirements specified in FED–STD 1028.

(End of requirement statement)

36. Section 201–8.112–16 is revised to read as follows:

§ 201–8.112–16 FED–STD 1030A, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits.

(a) FED–STD 1030A specifies the electrical characteristics of unbalanced voltage digital interface circuits employed for the interchange of serial binary information conveyed at the DC baseband level at signaling rates of up to 100 kilobits per second. It adopts, with the additional requirements stated therein, Electronic Industries Association (EIA) Standard RS–423–A. Federal agencies shall use this standard in the design and/or acquisition of equipment requiring these interface circuits. Note that some digital interfaces; e.g., EIA RS–232–C or CCITT V.35, do not require the use of these circuits. Therefore, FED–STD 1030A is required only to the extent that user applications or specific digital interfaces dictate the use of these circuits.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Digital Interface Circuits—Unbalanced Voltage (APR 84 FIRMR)

All equipment using unbalanced voltage digital interface circuits that is offered as a result of this requirement shall comply with the electrical characteristics addressed by FED–STD 1030A.

(End of requirement statement)

§ 201–8.112–17 [Reserved]

37. Section 201–8.112–17 is removed and reserved as follows:

§ 201–8.112–18 [Reserved]

38. Section 201–8.112–18 is removed and reserved as follows:

39. Sections 201–8.112–19 through 201–8.112–24 are reserved as follows:

§ 201–8.112–19 [Reserved]

§ 201–8.112–20 [Reserved]

§ 201–8.112–21 [Reserved]

§ 201–8.112–22 [Reserved]

§ 201–8.112–23 [Reserved]

§ 201–8.112–24 [Reserved]

40. Section 201–8.112–25 is added to read as follows:

§ 201–8.112–25 FED–STD 1061, Group 2 Facsimile Apparatus for Document Transmission.

(a) FED–STD 1061 establishes the machine specifications for Group 2 facsimile apparatus used on voice band analog circuits. This group exploits bandwidth compression techniques to achieve a transmission time of approximately 3 minutes for a 216 mm by 297 mm size document with a nominal resolution of four (4) lines per millimeter.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Facsimile Apparatus (Group 2)—Voice Band Analog Circuits (APR 84 FIRMR)

All Group 2 facsimile apparatus offered as a result of this requirement for use with voice band analog circuits shall comply with FED–STD 1061.

(End of requirement statement)

41. Section 201–8.112–26 is added to read as follows:

§ 201–8.112–26 FED–STD 1062, Group 3 Facsimile Apparatus for Document Transmission.

(a) FED–STD 1062 establishes machine specifications for Group 3 facsimile apparatus, as defined in the FED–STD, for use over voice band analog circuits. Federal departments and agencies shall comply with this standard in the design, development, and procurement of facsimile terminals/systems with the following exception: Military Standard 188–161 applies to tactical users within the Department of Defense.

(b) FED–STD 1062 does not apply to the transmission of mixed mode information such as coded character data and image data. Technical specifications of the standard are contained in Electronic Industries Association Standard RS–465.

(c) The standard terminology for use in requirements documents, including solicitations, is:

Acquisition, Design or Development of Group 3 Facsimile Apparatus (APR 84 FIRMR)

All Group 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED–STD 1062.

(End of requirement statement)

42. Section 201–8.112–27 is added to read as follows:

§ 201–8.112–27 FED–STD 1063, Telecommunications: Procedures for Document Facsimile Transmission.

(a) FED–STD 1063 specifies procedures for transmitting facsimile documents over voice band analog circuits. Federal departments and agencies shall comply with this standard in the design, development, and procurement of facsimile terminals/systems with the following exception: Military Standard 188–161 applies to tactical users within the Department of Defense.

(b) FED–STD 1063 does not apply to the transmission of mixed mode information such as coded character data and image data. Technical specifications of the standard are contained in Electronic Industries Association Standard RS–466. Group 1, 2, and 3 facsimile apparatus are described in Electronic Industries Association Standard RS–465.

(c) The standard terminology for use in requirements documents, including solicitations, is:

Acquisition, Design or Development of Group 1, 2, and 3 Facsimile Apparatus (APR 84 FIRMR)

All group 1, 2, and 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED–STD 1063.

(End of requirement statement)

43. Section 201–8.113–2 is revised to read as follows:

§ 201–8.113–2 FIPS PUB 16–1/FED–STD 1010, Bit Sequencing of the Code for Information Interchange in Serial-By-Bit Data Transmission.

(a) FIPS PUB 16–1/FED–STD 1010 specifies the method of transmitting the Standard Code for Information Interchange, FIPS PUB 1–2, in serial-by-bit, serial-by-character data transmission. FIPS PUB 16–1 reflects changes necessary to accommodate FIPS PUB 1–2 when operating in either 7- or 8-bit coded environments. The standard is applicable to the transmission of the standard code in a serial bit stream form at the interface between data terminal and data communication equipment. Data terminal equipment transmitting an approved Federal subset or superset of FIPS PUB 1–2 must comply with FIPS PUB 16–1/FED–STD 1010. This standard adopts the technical specifications contained in American National Standard X3.15–1976, same subject.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Bit Sequencing—Serial Data Transmission (DEC 85 FIRMR)

All applicable equipment or services that may result from this requirement, transmitting in a serial-by-bit, serial-by-character mode, must be capable of bit sequencing as prescribed in FIPS PUB 16–1/FED–STD 1010 for the transmission of the Standard Code for Information Interchange, FIPS PUB 1–2, at the interface between data terminal equipment and data communication equipment.

(End of requirement statement)

44. Section 201–8.113–3 is revised to read as follows:

§ 201–8.113–3 FIPS PUB 17–1/FED–STD 1011, Character Structure and Character Parity Sense for Serial-By-Bit Data Communication in the Code for Information Interchange.

(a) FIPS PUB 17–1/FED–STD 1011 specifies the method of transmitting the Standard Code for Information Interchange, FIPS PUB 1–2, in serial-by-bit, serial-by-character data transmission. FIPS PUB 17–1 reflects changes necessary to accommodate revisions prescribed in FIPS PUB 1–2 when operating in either 7- or 8-bit coded environments. The standard is applicable at the interface between data terminal and data communication equipment. Data terminal equipment transmitting an approved Federal subset or superset of FIPS PUB 1–2 must comply with FIPS PUB 17–1/FED–STD 1011. This standard adopts the technical specifications contained in American National Standard X3.16–1976, same subject.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Character Structure/Parity—Serial Data Transmission (DEC 85 FIRMR)

All applicable equipment that may result from this requirement, transmitting in a serial-by-bit, serial-by-character synchronous or asynchronous mode, must be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 17–1/FED–STD 1011 for the transmission of the Standard Code for Information Interchange, FIPS PUB 1–2, at the interface between data terminal equipment and data communication equipment.

(End of requirement statement)

45. Section 201–8.113–4 is revised to read as follows:

§ 201–8.113–4 FIPS PUB 18–1/FED–STD 1012, Character Structure and Character Parity Sense for Parallel-By-Bit Data Communication in the Code for Information Interchange.

(a) FIPS PUB 18–1/FED–STD 1012 specifies the channel assignment for transmitting the Standard Code for Information Interchange, FIPS PUB 1–2, in parallel-by-bit, serial-by-character data transmission. FIPS PUB 18–1 reflects changes necessary to accommodate revisions prescribed by FIPS PUB 1–2 when operating in either 7- or 8-bit coded environments. The standard is applicable at the interface between data terminal equipment and data communication equipment. Data terminal equipment transmitting an approved Federal subset or superset of FIPS PUB 1–2 must comply with FIPS PUB 18–1/FED–STD 1012. This Standard adopts the technical specifications contained in American National Standard X3.25–1976, same subject.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Character Structure/Parity—Parallel Data Transmission (DEC 85 FIRMR)

All applicable equipment or services that may result from this requirement, transmitting in a parallel-by-bit, serial-by-character mode, must be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 18–1/FED–STD 1012, when transmitting the Standard Code for Information Interchange, FIPS PUB 1–2, or an approved Federal subset at the interface between data terminal equipment and data communication equipment.

(End of requirement statement)

Dated: February 10, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86–5210 Filed 3–10–86; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50718–6023]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to place a minimum size limit of seven pounds (3.2 kilograms (kg)) on the landing of bigeye tuna in the Atlantic tuna fishery. This management measure was recommended by the International Commission for the Conservation of Atlantic Tunas (Commission) and will eliminate any advantage to identifying yellowfin as bigeye tuna by establishing identical regulations for both species.

EFFECTIVE DATE: April 9, 1986.

ADDRESS: Copies of the regulatory impact review prepared for this rule are available from E. C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, (213) 548–2518.

SUPPLEMENTARY INFORMATION: At its fourth special meeting in 1984, the Commission recommended that the size limit on bigeye tuna, first established in 1981, remain in effect indefinitely to conform the fishing regulations to the limitations on the landing of yellowfin tuna.

On October 30, 1985, proposed rules implementing a permanent minimum size limit on bigeye tuna (*Thunnus obesus*) of seven pounds (3.2 kg), in conjunction with an incidental catch allowance of three percent by weight, were published in the **Federal Register** (50 FR 45134). The public comment period ended on November 29, 1985; no comments were received. Therefore, the Secretary issues this final rule unchanged from the proposed rule published on October 30, 1985 (50 FR 45134).

Classification

A regulatory impact review (RIR) was prepared which presents the effects of implementing the minimum size limit. Copies of the RIR are available at the above address. Based on the RIR, the Administrator of NOAA determined that the rule is not major as defined by E.O. 12291. It also was determined that this action is not significant under the Regulatory Flexibility Act because it will not have a significant economic effect on a substantial number of small entities. The rule will have little or no effect because the domestic fleet generally harvests fish above seven pounds.

Since this final regulation clarifies and improves implementation of the Commission's recommendations without altering the management regime, it is excluded from the requirements of the National Environmental Policy Act and no environmental assessment or environmental impact statement has been prepared.

This rule has no information collection provision for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 285

Fisheries.

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 285 is amended as follows:

PART 285—[AMENDED]

1. The authority citation for Part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

§ 285.50 [Amended]

2. Section 285.50 is amended by removing the last sentence "The prohibition against fishing for bigeye

tuna less than seven pounds is to remain in effect until December 31, 1983."

[FR Doc. 86-5271 Filed 3-10-86; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 60339-6039]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce issues an emergency rule amending the regulations for the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic. This rule provides for reductions in the total allowable catch, allocations, and quota for the Gulf group of king mackerel based on recent data and socio-economic considerations. The intended effect is to protect the Gulf group of king mackerel which has been depleted to the point where the fishery is nearing collapse.

EFFECTIVE DATES: In § 642.21, the introductory text of paragraph (a), paragraphs (a) (1), (2) and (3), and (c) are suspended from March 6, 1986, through June 4, 1986, and new paragraphs (f), (g), and (h) are effective from March 6, 1986, through June 4, 1986. All other paragraphs remain effective. The amendments to § 642.7 are effective from March 6, 1986 through June 4, 1986.

ADDRESS: Copies of documents supporting this action may be obtained from and comments on this action may be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: King mackerel is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) and its implementing regulations at 50 CFR Part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 1 to the FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and implemented September 22, 1985 (50 FR 34843, August 28, 1985).

Intensive fishing effort is jeopardizing the biological integrity of the Gulf migratory group of king mackerel. The Gulf migratory group, which inhabits the Gulf of Mexico during the summer and supports a winter fishery in southeast Florida, has been severely overfished. Amendment 1 to the FMP estimated the possible range of allowable biological catch (ABC) for the Gulf migratory group at 10,713,000 to 14,997,000 pounds annually with a best point estimate of 14,225,000 pounds. At this level of harvest the population was expected to recover within 3 to 5 years.

The latest stock assessment (August 15, 1985), made at the request of the Councils, estimated the possible range of ABC at 980,000 to 2,340,000 pounds annually for the Gulf migratory group. Recruitment has declined to 16 percent of the 1979 level, whereas the spawning stock has declined to 26 percent of the 1979 level. This analysis indicated that current problems exist with the Gulf migratory group which threaten complete collapse of the fishery if fishing mortality is not reduced below current levels.

The Councils considered the stock assessment report, information obtained from 15 public hearings, and the social and economic impacts associated with imposing more severe management restrictions including a moratorium. They determined that to leave total allowable catch (TAC) for the Gulf migratory group at 14.225 million pounds would ignore the depleted status of the resource, but that implementation of a TAC within the limits of the revised stock assessment would be devastating to the valuable commercial and recreational users dependent upon this resource. The Councils decided that a 22 percent reduction of the average catch over the last three years would be sufficient to protect and begin to restore the Gulf migratory group and would be an acceptable level of economic and social short-term sacrifice on the part of the commercial and recreational fishermen. Therefore, the Councils recommended that the TAC for the Gulf migratory group of king mackerel be set at 5.20 million pounds for the current fishing year (1985-1986) which began July 1, 1985. Therefore, TAC for the Gulf group of king mackerel is set at 5.20 million pounds. This is allocated according to the formulas in the FMP as follows:

(1) Recreational—3.54 million pounds.

(2) Commercial—1.66 million pounds.

The commercial allocation under § 642.21 (f) and (g) is further divided into the following quotas:

(1) Eastern zone—1.08 million pounds.

(2) Western zone—0.48 million pounds.

(3) Purse seine—0.10 million pounds.

The commercial fishery will be closed individually or collectively, as appropriate, by notice under § 642.22 when each quota is exceeded or is projected to be reached.

The recreational fishery allocation established by this emergency rule under § 642.21(h) is regulated by a bag limit of two fish per person per trip on private vessels and three fish per person per trip on charter boats (excluding the captain and crew) or two fish per person per trip (including captain and crew), whichever is greater. The harvest of the recreational allocation will be closely monitored by use of the NMFS Marine Recreational Fishing Statistics Survey, charterboat survey, and State data. If the recreational sector reaches or is projected to reach its allocation of 3.54 million pounds, that fishery will be closed by notice under §642.22.

The Councils are unable to respond to this problem under the framework measure at § 642.27 because modifications of TAC or other regulations are restricted to preseason actions that become effective only at the beginning of each fishing year (i.e. July 1). These emergency regulations lowering TAC are therefore implemented under section 305(e)(2)(B) of the Magnuson Act to prevent further stress on the resource by fishing at an unacceptable level, i.e. the level set in Amendment 1, while still allowing the recreational and commercial fisheries to operate.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds for good cause (i.e. to prevent further stress on the Gulf migratory group of king mackerel) that the reasons justifying promulgation of this rule on an emergency basis also makes it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. This determination has been submitted for review by the responsible

State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded there will be no significant impact on the human environment. A copy of the EA is available from the NMFS Southeast Regional Office at the **ADDRESS** listed above.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 642.7 is amended by adding a new paragraph (a)(27) to be effective from March 6, 1986, through June 4, 1986, to read as follows:

§ 642.7 Prohibitions.

(a) * * *

(27) Possess Gulf migratory group king mackerel harvested in the FCZ under the recreational allocation set forth at §642.21(h) after closure has been invoked as specified in § 642.22.

* * * * *

3. Section 642.21 is amended by suspending all of paragraph (a) except the last sentence, from March 6, 1986, through June 4, 1986, and adding new paragraphs (f), (g), and (h) to be effective from March 6, 1986, through June 4, 1986, to read as follows:

§ 642.21 Quotas.

* * * * *

(f) The commercial allocation for the Gulf migratory group of king mackerel is 1.66 million pounds for the current fishing year (July 1, 1985—June 30, 1986). This allocation is divided into quotas as follows:

(1) 1.08 million pounds for the eastern zone;

(2) 0.48 million pounds for the western zone; and

(3) 0.10 million pounds for purse seines (see Figure 2 of § 642.29, and paragraph (e) of this section for a description of allocation zones).

(g) *Purse seine quota for king mackerel.* (1) The harvest of king mackerel by purse seines from the Gulf migratory group is limited to 0.10 million pounds for the current fishing year.

(2) The total harvest of king mackerel by purse seines from the Atlantic ocean is limited to 400,000 pounds each fishing year.

(3) King mackerel harvested by purse seines are counted in the commercial allocations and quotas specified in paragraphs (a) and (f) of this section.

(h) *Recreational quota for king mackerel.* The recreational allocation for the Gulf migratory group of king mackerel is 3.54 million pounds for the current fishing year (July 1, 1985–June 30, 1986).

[FR Doc. 86–5269 Filed 3–6–86; 5:03 pm]

BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 41270–5026]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice to continue size limit adjustment.

SUMMARY: NOAA issues this notice to continue the size limit adjustment to 5 inches for the surf clam fishery made effective November 8, 1985. Public comments were requested through December 31, 1985. The intended effect of the rule is to reduce the discard rate, resulting in greater short and long term yield from the fishery.

EFFECTIVE DATE: November 8, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617–281–3600, extension 263.

SUPPLEMENTARY INFORMATION: Amendment 5 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) implemented an FMP framework managment measure which allows adjustment of the minimum size limit for surf clams by authorizing the Director of the Northeast Region, NMFS (Regional Director), in consultation with the Mid-Atlantic Fishery Management Council (Council), to select a minimum size limit for surf clams from among the following values: 5½, 5¼, 5, and 4¾ inches.

The size limit is selected to reduce discards of surf clams to less than 30 percent, on average, of trip catches. The Regional Director monitors current stock assessments, catch reports, and other relevant information concerning the size distribution of the surf clam resource in determining if any adjustment in the size limit is appropriate. Under these adjustment criteria, a minimum size limit of 5¼ inches was in effect from October 14, 1984, through November 7, 1985.

The Council voted at its September, 1985, meeting to recommend that the Regional Director reduce the size limit to 5 inches. The Council's Surf Clam Committee, at its meeting on October 28, 1985, advised the Regional Director to construct the discard rate by combining landed undersized surf clams with actual discards, i.e., those undersized clams that are thrown overboard.

The NMFS Northeast Fisheries Center (NEFC) analyzed surf clam discarding rates and size composition of landings in the Mid-Atlantic Area from January 1, 1985 through October 4, 1985. This information showed that the percentage of discards, as defined by the Council criteria, was between 40 and 50 percent for the ten month period, exceeding the target discard level of 30 percent.

Based on this information, statements from industry, and guidance from the Council, the Regional Director determined that the minimum size limit for surf clams should be reduced from 5¼ inches to 5 inches. On November 8, 1985, NOAA filed a notice with the Office of the Federal Register to reduce the minimum size limit to 5 inches in all three areas of the fishery, effective November 8, 1985 (50 FR 46671; November 12, 1985). Comments on this action were invited from the public for 15 days following publication. The notice specified that, pursuant to provisions of the FMP and implementing regulations, the Secretary would consider the comments and publish notice of any changes in the size limit. On December 5, 1985, the public comment period was extended through December 31, 1985, due to the complexity of the issue and industry interest (50 FR 49852).

Five written comments were received. Four of the commentors opposed the adjustment; one endorsed it. The comments opposing the adjustment

questioned the definition of discards, the time period of information used to calculate the discard rate, the procedures by which the size change was accomplished, and suggested that a 5 inch minimum size would lead to more rapid harvest of allowable quotas and be inconsistent with stock conservation.

Comment 1: Defining discards to include landed undersized clams is an overboard interpretation encouraging the landing of undersized clams.

Amendment 5 authorizes the Regional Director to change surf clam minimum sizes to prevent waste of the stock through excessive discards. While providing no definition of discards, the amendment does provide that "in adjusting the size limit the Regional Director shall consider current stock assessments, catch reports, and other relevant information." Using this guidance, the Regional Director could consider, in determining to adjust the minimum surf clam size, the large volume of undersized clams landed which, because of the prevailing size distribution of surf clam stocks, would with a more rigorous enforcement program have been discarded at sea and wasted, contrary to the purpose of the Amendment. Although under ideal conditions fishermen might have responded to the minimum size regulations by directing fishing effort in areas with larger surf clams, in practice they were limited in doing so by the prohibition on fishing more than six hours every other week.

No evidence of deliberate and manipulative non-compliance with the size limit during the period upon which the adjustment was based has come to light; if it had, public policy would compel the Regional Director to exclude evidence arising from such practices from his assessment of discard rates.

Comment 2: The period of time used in calculating the discard percentage was adopted arbitrarily. A different time period might have resulted in a lower apparent discard rate.

In deciding to reduce the minimum size, the Regional Director was authorized to act on his own initiative to view landed undersized clams as "constructive discards" and base the adjustment on industry performance over a six month period. The Regional Director was empowered to and, because of the policy implications of the size limit change, did, during required consultations, ask the Council for its preference in his construction of the available facts. Advice of the Council's Surf Clam Committee to use a base period at least six months in length was later affirmed by the full Council. The base period used to calculate the average discard rate, January through October of 1985, was a period when excessive discards, and hence the possible need for a size limit adjustment, was at issue in industry and government forums. A different base period may have led to marginally different results, but would have been equally subject to criticism by fishermen concerned that the size limit should be reduced to limit discards.

Comment 3: The public was not afforded adequate opportunity to influence and respond to deliberations concerning the size limit selection.

The adjustment procedure provides considerable opportuntiy for Council consultation, notice, and public comment. The discard problem and large landings of undersized clams were discussed at Council meetings in June, August, September, and December, 1985, and at the Surf Clam Committee Meeting on October 28, 1985, attended by representatives from the industry. The **Federal Register** notice announcing the adjustment provided ample opportunity for public comment. The public comment period was extended at industry request to allow commentors time to develop and present their positions to NMFS and the Council prior to final agency action.

Comment 4: The reduction in minimum size increases harvest rates and is inconsistent with stock conservation.

Size limit adjustments promulgated under the implementing regulations are concerned only with which of four alternative minimum surf clam sizes will reduce surf clam discard rates below 30 percent. While stock conservation is a primary objective of the overall surf clam management program, it is not an issue here since each of the alternative size specifications available under the rule is within a range which promotes harvest of surf clams leading to maximum yield per recruit. In fashioning the size limit adjustment provision, the Council expressly recognized and accepted the trade-off of increased harvests with a reduced size limit to prevent excessive discards and waste of the stock.

Although a smaller legal minimum size does make a greater proportion of the standing stock subject to legal harvest, thus potentially increasing catch rates, the objective of the size limit is to optimize surf clam yield per recruit, not control harvests within quotas. Other FMP measures, including fishing time restrictions and closures, are used to keep harvest within optimum yield for the fishery.

Therefore, based on the record of public comment and the presentations and actions taken by the Council, the Secretary continues the surf clam minimum size limit at 5 inches in all three areas of the fishery.

Other Matters

This action is taken under the authority of 50 CFR 652.25 and is taken in compliance with Executive Order 12291. The action is covered by the certification for Amendment 5 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries, and under the Regulatory Flexibility Analysis, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements

Dated: March 6, 1986

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service

[FR Doc. 86-5270 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 47
Tuesday, March 11, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Use of Federal Rules of Evidence in Federal Agency Adjudications

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Adjudication has under consideration a draft recommendation on the use of the Federal Rules of Evidence in Federal Agency Adjudications. Interested persons are invited to comment on the draft recommendation.

DATES: Comments due by Wednesday, April 9, 1986.

ADDRESS: Send comments to: Richard K. Bert, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, 202–254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Adjudication has under consideration a draft recommendation of the use of the Federal Rules of Evidence in Federal agency adjudications. The draft recommendation is based on a study prepared for the Administrative Conference by Professor Richard J. Pierce, Jr. of the University of Pittsburgh Law School. Copies of the report may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. (Telephone: 202–254–7065).

Professor Pierce's report finds that agency rules governing the admissibility of evidence in adjudicatory proceedings fall into three general categories: (1) Rules which track the standard, set out the Administrative Procedure Act, "Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence,"; (2) the rules which require the application of the Federal Rules of Evidence "so far as particable;" and (3) rules which permit or encourage resort to the Federal Rules of Evidence for guidance, but leave the decision whether to apply them in the discretion of the presiding officer. Professor Pierce concludes that the third model has advantages over the other two, and the draft recommendation urges that it be adopted by the agencies.

The Committee on Adjudication invites comments on the proposed recommendation, and, in addition, requests comments addressed to the four issues listed below the text of the proposed recommendation. The committee requests that comments be filed at Conference's office by the close of business, Wednesday, April 9, 1986. However, comments received subsequent to that date will be considered to the extent the committee's schedule permits.

Draft Recommendation

Use of Federal Rules of Evidence in Federal Agency Adjudication.

Preamble

Federal agencies have adopted hundreds of different sets of rules governing admission of evidence in formal adjudications.[1] While those rules vary in their details, they can be placed in three general categories: (1) Rules that reflect the wide open standard of APA section 556(d); (2) rules that require presiding officers to apply the Federal Rules of Evidence (FRE) "so far as practicable;" and, (3) rules that permit presiding officers to use the FRE as a source of guidance in making evidentiary rulings. In a few instances, Congress has required the agency to adopt a standard that refers to the FRE; in other cases the agency voluntarily adopted such a standard.

Presiding officers vary substantially in the extent of their use of the FRE as a source of guidance in making evidentiary rulings. Presidint officers at agencies whose rules refer to the FRE rely on the FRE as a source of guidance much more frequently than presiding officers at agencies whose rules reflect only the APA standard. Presiding officers at agencies with rules that refer to the FRE are more satisfied with the rule they apply than presiding officers at agencies with rules that reflect only the APA standard. The relative dissatisfaction expressed by many presiding officers in the latter group seems to be based on their perception that the APA standard does not accord them sufficient discretion to engage in responsible case management. Because they perceive that they do not have the discretion to exclude evidence they consider clearly unreliable, they must devote valuable hearing and opinion-writing time to reception and consideration of such evidence.

Because the APA evidentiary standard is broadly permissive, courts routinely decline to reverse agencies that have adopted this standard on the basis of alleged erroneous admission of evidence. However, courts seem confused by the FRE "so far as practicable" evidence standard. Some courts apparently interpret it to accord near total discretion to agencies. Other courts interpret it as a mandate to comply with the FRE except in unusual circumstances. Still others apparently view the standard as a mandate to admit evidence inadmissible under the FRE except when unusual circusmtances require application of the FRE. Independent of the evidentiary standard adopted by the agency, reviewing courts apply three general rules: (1) An agency must respect evidentiary privileges; (2) an agency can be reversed if it declines to admit evidence admissible under the FRE; and, (3) an agency will be reversed if it bases a finding on unreliable evidence.

The FRE "so far as practicable" standard has four significant disadvantages: (1) Courts seem confused as to what it means or how to enforce it; (2) instructing presiding officers to exclude evidence based on the standard forces them to undertake a difficult and hazardous task; (3) excluding evidence on the basis that it is inadmissible in a jury trial is totally unnecessary to insure that agencies act only on the basis of reliable evidence; and, (4) agencies, like other experts, should be permitted to rely on classes of evidence broader than

[1] The term "formal adjudications" refers to adjudications required by statute to be determined on the record after opportunity for an agency hearing in accordance with the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, and also includes agency adjudications which by regulation are conducted in conformance with these provisions.

those that can be considered by lay jurors. Yet, the APA standard alone has the disadvantage that presiding officers perceive it as an inadequate tool for effective case management. A standard that *permits* presiding officers to use the FRE as a source of guidance in making evidentiary rulings avoids the disadvantages of both the APA standard and the FRE "so far as practicale" standard. In addition, under any set of evidentiary rules, an agency can materially assist presiding officers in their evidentiary decisionmaking by specifying with greater particularity the substantive standards the agency intends to apply in resolving various classes of adjudications and the types of evidence it considers reliable and probative with respect to recurring factual issues.

Recommendations

1. Congress should not require agencies to apply the Federal Rules of Evidence to limit the discretion of presiding officers to admit evidence in formal adjudications. (This recommendation is inconsistent with some existing statutory provisions, *e.g.*, 29 U.S.C. 160(B).)

2. Agencies should not limit the discretion of presiding officers to admit evidence in formal adjudications by requiring them to apply the Federal Rules of Evidence. (This recommendation is inconsistent with some agency regulations, *e.g.*, 47 CFR 1.351.)

3. Agencies should adopt evidentiary regulations applicable to formal adjudications that clearly confer on presiding officers discretion to exclude unreliable evidence and evidence the probative value of which is substantially outweighed by its potential for undue consumption of time. Those regulations should include descretion to use the Federal Rules of Evidence as a source of general guidance in determining reliability and to use the weighted balancing test in Federal Rule 403, which allows exclusion of evidence the probative value of which is substantially outweighed by its potential for undue consumption of time. (*See, e.g.*, 29 CFR 1844.)

4. Agencies should assist presiding officers in their evidentiary decisionmaking by announcing in advance of a formal adjudication the substantive standards the agency intends to apply in resolving the adjudication. (This recommendation is intended to assit presiding officers assigned to formal adjudications governed by extremely broad statutory standards, *e.g.*, public convenience and necessity. If the agency does not specify the applicable substantive standard with greater particularity in advance of the formal adjudication through some means, *e.g.*, rulemaking, prior adjudication or scoping order, the presiding officer will have difficulty making informed decisions concerning the relevance or relative probative value of evidence tendered.)

5. For purposes of these recommendations, formal adjudication means an adjudication required by statute or regulation to be determined on the record after opportunity for a hearing. For purposes of these recommendations, presiding officer means an Administrative Law Judge, an agency head, or other officer who presides at the reception of evidence in such a proceeding.

Additional Issues To Consider

1. The proposed recommendation is drafted with the intention of providing a flexible evidentiary standard adaptable to any agency formal adjudication. It is desirable to promulgate any recommendation suggesting an evidentiary standard applicable to all agency formal adjudications, given the wide variety in the functions and in the types of adjudications conducted by agencies?

2. The proposed recommendations are entirely precatory in their reference to the Federal Rules of Evidence. Should some degree of reliance on the Federal Rules be mandatory?

3. The proposed recommendations apply only to formal adjudications required by staute or regulation to be on the record. Should they be broadened to include the many proceedings conducted as formal adjudications by agency custom of because the agency voluntarily chooses for other reasons to proceed by formal adjudication? Should they apply to all proceedings involving evidentiary hearings?

4. Should the recommendations apply to nonadversarial formal adjudications, *e.g.*, Social Security Administration disability proceedings?

List of Subjects

Administrative practice and procedure, Evidence.

(5 U.S.C. 574)

Dated: March 7, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86-5424 Filed 3-10-86; 8:45 am]

BILLING CODE 6110-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 1501

Operations of the International Organizations Employees Loyalty Board

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its current regulation to conform it to recent Federal court decisions, which have ruled that certain terms and conditions of the regulation (which is derived from Presidential Executive Order 10422) are overly broad and vague and, therefore, may violate individual rights guaranteed by the First Amendment of the U.S. Constitution. These regulations would respond to these concerns and limit and tighten applicability of the standard by substituting more precise, tested language with appropriate safeguards that should successfully withstand legal challenge and protect the purposes served by the Presidential Executive Order on which they are based.

DATE: Comments must be received on or before May 12, 1986.

ADDRESS: Send or deliver written comments to George Woloshyn, Associate Director, Compliance and Investigations Group, Room 5478, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: George Wolshyn, 202/632-4426.

SUPPLEMENTARY INFORMATION:

Evaluation Required

Executive Order 10422, first promulgated in 1953, by President Harry S. Truman, requires that U.S. citizen working, or wishing to work, for the United Nations or other public international organizations be evaluated for loyalty to the United States. The Order sets out the terms and conditions for making such determinations.

The results of such evaluation are provided to the Secretary of State who, after appropriate investigation, reports his or her findings to the international organization for its use in making employment decisions.

Challenges to Evaluation

Specific instances have occurred in which employees or candidates for employment have challenged the investigation process in Federal court of the basis of putative effects on their

First Amendment rights of freedom of speech and assembly. They argued that in order to obtain employment as a private citizen with an international organization, they were required by the loyalty criteria to refrain from lawful behavior or speech in which they desired to engage. The courts agreed and decided in their favor. The principal difficulty, according to the courts, is that certain terms of the layalty determination criteria are unconstitutionally board. They specifically focused on two phrases containing prohibitions involving the *advocacy of* certain acts or beliefs as examples of how the loyalty standard went further in trying to influence the behavior of individual citizens than First Amendment rights would permit.

Features of this amendment

This amendment more precisely states the content of each evaluation criterion so that its application is more narrowly and tightly construed. The proposed changes are noted below, along with a brief rational for each change.

(a) The phrase "knowingly associating with spies and saboteurs" is eliminated from § 1501.8(b)(1). *Reason:* courts have expressed doubts regarding its constitutionality

(b) The phrase "sedition or advocacy therof" is eliminated from § 1501.8(b)(1). *Reason:* courts have found this languate to be unconstitutional.

(c) The word "treason" is added to 1501.8(b)(1). *Reason:* it adds clarity and consistency to the sentence.

(d) The advocacy proscription in § 1501.8(b)(3) is limited by addition of language that requires a threat of imminent lawless action. *Reasons:* the additional words are required by the courts, and their absence was noted in one court decision.

(e) The word "may" in the phrase "which may indicate disloyalty . . ." is eliminated from § 1501.8(b)(4). *Reason:* elimination of the word serves to limit application of the provision. Moreover, the disclosures in question are limited to classified documents of information. *Reason:* clarifies and limits the nature of the information disclosed.

(f) the wording "and to the deteriment of the Government of the United States" is added to § 1501.8(b)(5). *Reason:* the added wording serves to reasonably narrow application of the provision.

(g) The membership provision of § 1501.8(b)(6) is repleced with more recent wording from the amended Executive Order 10422, Part II, 2(f). *Reason:* the newer language is required by previous court decision.

E.O. 12291, Federal Regulaiton

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it involves only private individuals seeking to work for public international organizations.

List of Subjects in 5 CFR Part 1501

Administrative practice and procedure, International organizations, Organizations and functions (Government agencies).

U.S. Office of Personnel Management

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 1501 as follows:

PART 1501—OPERATIONS OF THE INTERNATIONAL ORGANIZATIONS EMPLOYEES LOYALTY BOARD

1. The authority citation for Part 1501 continues to read as follows:

Authority: E.O. 10422, as amended; 3 CFR, 1949–1953 Comp., p. 921.

2. Section 1501.8(b) is revised to read as follows:

§ 1501.8 Grounds for determinations of the Board.

* * * * *

(b) *Activities and associations.* Among the activities and associations of the employee or person being considered for employment which may be considered in connection with a determination of disloyalty may be one or more of the following:

(1) Sabotage, espionage, or treason, or attempts thereat or preparations therefor.

(2) Advocacy of revolution or force or violence to alter the constitutional form of government of the United States, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

(3) Intentional, unauthorized disclosure to any person, under circumstances which indicate disloyalty to the United States, of classified United States documents or United States information obtained by the person making disclosure as a result of his or her previous employment by the Government of the United States or otherwise.

(4) Performing or attempting to perform his or her duties, or otherwise acting, while an employee of the U.S. Government during a previous period, with the intent to serve the interest of another government in preference to the interests of the United States and to the detriment of the Government of the United States.

(5) Knowing membership in, with the specific intent of furthering the aims of, or adherence to and active participation in with the specific intent of furthering the aims of, any foreign or domestic organization, association, movement, group, or combination of persons, which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States, or any State, or which seeks to overthrow the Government of the United States or subdivision thereof by unlawful means.

[FR Doc. 86–5423 Filed 3–10–86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Certain Commodities; Upland Cotton

AGENCY: Office of the Secretary, USDA

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to (1) prescribe a formula by which the Secretary of Agriculture will derive the prevailing world market price (adjusted to United States quality and location) for the 1986 through 1990 crops of upland cotton (hereinafter referred to as the "adjusted world price"), (2) provide a mechanism by which such adjusted world price will be announced periodically, and (3) invite public comment on the proposals. These actions are required by section 103A(a)(5)(E)(i–iii) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985.

DATE: Comments must be received on or before March 26, 1986, in order to be assured of consideration.

ADDRESS: Mail comments to Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Deputy Director, Commodity Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major". It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this proposed rule applies are: Commodity Loans and Purchases–10.051, and Cotton Production Stabilization–10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is applicable to the provisions of this proposed rule and an initial Regulatory Flexibility Analysis has been completed and is available upon request.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Basis for Adjusted World Price Determination

Section 103A(a)(5)(E)(i) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act") provides that the Secretary of Agriculture shall prescribe by regulation:

(a) A formula to define the prevailing world market price for cotton; and

(b) A mechanism by which such prevailing world market price shall be announced periodically.

Section 103A(a)(5)(E)(ii) provides that the Secretary, not later than 90 days after the date of enactment of the Food Security Act of 1985 (Pub. L. 99–198), shall:

(a) Publish in the **Federal Register** proposed regulations specifying the formula for determining the prevailing world market price for cotton and the mechanism for periodically announcing such price; and

(b) Invite public comment on the proposed regulations.

The prevailing world market price for upland cotton, adjusted to U.S. quality and location (hereinafter referred to as the "adjusted world price"), as determined in accordance with the formula set forth in this proposed rule, shall be utilized under several provisions of the upland cotton program for the 1986 through 1990 crops.

For example, if the adjusted world price for any of the 1986 through 1990 crops of upland cotton is below the loan level for a crop of upland cotton, the Secretary must implement one of two programs designed to make United States upland cotton competitive in world markets.

Further, if the program which is implemented by the Secretary fails to make United States upland cotton fully competitive in world markets and if the adjusted world price is below the loan repayment rate for a crop of upland cotton, the Secretary shall provide for the issuance of negotiable marketing certificates to first handlers of cotton (persons regularly engaged in buying or selling upland cotton) in such monetary amounts and subject to such terms and conditions as the Secretary determines will make upland cotton produced in the United States available at competitive prices, including such payments as may be necessary to make raw cotton in inventory on August 1, 1986, available on the same basis.

Under the provisions of this proposed rule, the prevailing world market price for upland cotton shall be determined based upon the average price quoted each Thursday for the five lowest-priced growths of the growths quoted for Middling (M) 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe price"). The Northern Europe price was selected as the basis for determining the prevailing world market price for upland cotton because it is readily available and is widely accepted as the most accurate indication of the competitive level of offering prices for upland cotton. The quotations are published daily and reflect offering prices from around the world. Furthermore, the Northern Europe price has been included as a part of the U.S. price support loan rate formula since the 1978 crop.

The Act provides that the prevailing world market price for upland cotton shall be adjusted to United States quality and location. Accordingly, the adjusted world price for upland cotton shall be equal to the Northern Europe price adjusted to average U.S. quality and location.

The Northern Europe price shall be adjusted to average U.S. spot market location by deducting the average difference during the preceding 52-week period between the average of the U.S. Northern Europe price quotations each Thursday for M 1 3/32 inch cotton and the average U.S. designated spot market price quotations each Thursday for M 1 3/32 inch cotton. The price so derived shall be further adjusted to Strict Low Middling (SLM) 1 1/16 inch (micronaire 3.5 through 4.9) cotton (hereinafter referred to as the "U.S. base quality") by deducting the difference between the loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton of the U.S. base quality, as announced by the Secretary. This price shall then be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton for the U.S. base quality in the designated spot markets and the national average loan rate for the U.S. base quality, as announced by the Secretary, to determine the adjusted world price for upland cotton.

The adjusted world price will be determined weekly beginning August 1, 1986, and continuing through the last Thursday of July 1991. Such price will be announced on or before 10:00 a.m. Eastern time each Friday. The initial determination will be made and announced as soon as possible after publication of a final rule in the **Federal Register** setting forth the formula for determining the adjusted world price for upland cotton.

Interested persons are invited to submit written comments on both the proposed formula for determining the adjusted world price and the proposed mechanism for periodically announcing such price. Comments must be received by March 26, 1986 in order to be assured of consideration. The adjusted world price for upland cotton must be determined and announced by the Secretary of Agriculture before final determinations regarding the 1986 upland cotton program can be announced. The comment period is being limited to 15 days because farmers and the entire cotton industry need to know all the detailed provisions of the 1986 upland cotton program as soon as possible in order for planting decisions to be finalized for the 1986 crop. Farmers are already planting 1986-crop upland cotton in some areas. Others are currently preparing land for planting.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Proposed Rule

Accordingly, it is proposed to amend 7 CFR Subtitle A by adding a new Part 26 to read as follows:

PART 26—DETERMINATION OF WORLD MARKET PRICE FOR CERTAIN COMMODITIES

Subpart A—Determination of World Market Price for Upland Cotton

Sec.
26.1 Applicability.
26.2 Determination of the prevailing world market price for upland cotton.
26.3 Adjusted world price for upland cotton.

Authority: Sec. 501, Pub. L. 99-198.

Subpart A—Determination of World Market Price for Upland Cotton

§ 26.1 Applicability.

This subpart sets forth the procedures for determining the prevailing world market price for upland cotton and the mechanisms for periodically announcing such price as required by section 103A(a)(5)(E) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act").

§ 26.2 Determination of the prevailing world market price for upland cotton.

The prevailing world market price for upland cotton shall be determined by the Secretary of Agriculture based upon the average of the prices quoted each Thursday for the five lowest-priced growths of the growths quoted for Middling one and three-thirty-seconds inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance, and freight) northern Europe (hereinafter referred to as the "Northern Europe price"). If no Thursday quotes are available, the latest available quotes will be used.

§ 26.3 Adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton, adjusted to average U.S. quality and location (hereinafter referred to as the "adjusted world price"), determined in accordance with paragraph (b) of this section, shall be applicable to the programs of the Department of Agriculture for the 1986 through 1990 crops of upland cotton as provided in section 103A of the Act.

(b) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with § 26.2 and adjusted to average U.S. quality and location as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i) The average of price quotations from the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. Northern Europe; and

(ii) The average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with subparagraph (b)(1) shall be adjusted to reflect the price of Strict Low Middling (SLM) 1 1/16 inch (micronaire 3.5 through 4.9) cotton (hereinafter referred to as the "U.S. base quality") by deducting the difference, as announced by the Secretary of Agriculture, between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

(3) The price determined in accordance with subparagraph (b)(2) shall be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for a crop of upland cotton of the U.S. base quality, as announced by the Secretary of Agriculture.

(c) If Thursday quotes are not available for either the Northern Europe or the spot market quotations for any week, that week will not be taken into consideration in determining the average difference in the 52-week period as provided in subparagraph (b)(1).

(d) The adjusted world price for upland cotton, as determined in accordance with paragraph (b), shall be determined weekly by the Secretary of Agriculture and shall be announced, to the extent practicable, on or before 10:00 a.m. Eastern time each Friday, beginning August 1, 1986, and continuing through the last Friday of July 1991. In the event that Friday is a nonworkday, the determination will be announced the next workday.

(e) The adjusted world price, determined in accordance with paragraph (b), shall be subject to further adjustments, as determined by the Executive Vice President, Commodity Credit Corporation, based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the upland cotton price support loan program for a crop of upland cotton.

Signed at Washington, DC, on March 6, 1986.

Frank W. Naylor, Jr.,

Acting Secretary.

[FR Doc. 86-5237 Filed 3-6-86; 4:24 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 86-ANE-1]

Airworthiness Directive; General Electric Co. (GE) CF6-50 and -45 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the removal from service of certain high pressure turbine rotor (HPTR) stage 1 disks installed on certain GE CF6-50 and -45 turbofan engines. The proposed AD is needed to prevent crack initiation in the HPTR stage 1 disk forward embossment radii which could result in an uncontained HPTR stage 1 disk failure.

DATE: Comments must be received on or before April 19, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to:

Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-1, 12 New England Executive Park, Burlington, Massachusetts 01803

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket Number 86-ANE-1.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from General Electric Company, 1 Neumann Way, Cincinnati, Ohio 45215. A copy of the SB is contained in Rules Docket Number 86-ANE-1, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Jeff Blazey, Engine Certification Branch,

ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7090.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-1". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain CF6-50 and -45 HPTR stage 1 disks may contain forward embossment radii contours which do not conform to the FAA approved type design. This condition adversely affects the fatigue strength of the disk, requiring its removal from service. The proposal AD would require removal of certain CF6-50 and -45 HPTR stage 1 disks in accordance with GE Alert SB A72-859, Revision 1, dated January 31, 1986, and inspection to detemine conformance with the FAA approved type design.

Conclusion

The FAA has determined that this proposed regulation involves 99 stage 1 disks installed in some CF-50 and -45 engines, core modules, or stocked as spares, and the approximate cost to each engine is $99,000. It has also been determined that a substantial number of small entities are not affected as the engines are only used on large aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (14 FR 11034; February 26, 1979); and (3) if promulgated, will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Air transporation, Aircraft, Aviation safety, Engines, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new AD:

General Electric Company: Applies to General Electric (GE) CF-50 and -45 turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent possible failure of high pressure turbine rotor (HPTR) stage 1 disk, accomplish the following:

(a) Remove from service, in accordance with GE Alert Service Bulletin (SB) A72-859, Revision 1, dated January 1, 1986, those HPTR stage 1 disks identified by specific serial numbers listed in GE Alert SB A72-859, Revision 1, under paragraph 2., Table 1, for inspection to determine conformance with the FAA approved type design.

(b) Compliance required as follows:

(1) For those disks with less than 5,490 flight cycles since new on the effective date of this AD, comply prior to the accumulation of 5,500 flight cycles.

(2) For those disks with 5,490 or greater flight cycles since new on the effective date of this AD, comply within the next 10 flight cycles.

(c) For HPTR stage 1 disks which do not conform to the approved FAA type design will be retired from service.

(d) Those HPTR stage 1 disks which conform to the approved FAA type design may be returned to service.

Note.—For the purpose of this AD, the number of flight cycles equals the number of flights that involve an engine operating sequence consisting of engine starting, takeoff operation, landing and engine shutdown.

Upon request, an alternate means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submisson of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Engine Certification Office, Burlington, Massachusetts may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SB identified in this document.

Issued in Burlington, Massachusetts, on February 27, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-5203 Filed 3-10-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 85-ANE-31]

Airworthiness Directives: Rolls-Royce, Ltd. RB211-22B and -524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directives (AD) which would require the removal and retirement from service, in accordance with a Rolls-Royce, Mandatory service bulletin (SB), of certain intermediate pressure (IP) compressor rotor asssemblies and IP turbine disks on certain Rolls-Royce RB211 engines that have been oversped in excess of 115 percent IP rotational speed (N2). The affected disks and rotors may have suffered unacceptable damage when oversped which could lead to an uncontained disk burst.

DATE: Comments must be received on or before April 30, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to:

Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 85-ANE-31, 12 New England Executive Park, Burlington, Massachusetts 01803

or delivered in duplicate to Room Number 311 at the above address.

Comments delivered must be marked: Docket Number 85–ANE–31.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable SB may be obtained from Rolls-Royce Limited, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. A copy of the SB is contained in Rules Docket Number 85–ANE–31 in the Office of the Regional Counsel, New England Region, and may be examined between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7084.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available for examination in the Rules Docket, both before and after the closing date for comments, at the address given above. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85–ANE–31." The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain IP compressor rotor assemblies and IP turbine disks have been oversped beyond 115 percent N2 and must be removed from service for inspection and possibly retired in accordance with the requirements of the compliance section of Rolls-Royce Mandatory SB RB211–72–5887, Revision 2, dated August 23, 1985. Though no failures of disks or rotors have occurred, testing and analysis has shown that it is possible to sustain unacceptable damage from such an overspeed. It is therefore deemed prudent to remove and inspect disks that have oversped beyond 115 percent N2 through and including 120 percent N2. Disks that have been oversped in excess of 120 percent N2, can not be returned to serviced and must be retired.

Conclusion

The FAA has determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this proposed regulation affects only operators using Lockheed L–1011 and Boeing 747 aircraft in which the RB211 engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291 as the total cost of this AD is estimated at $44,000 per year; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Engines, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 39 of the Federal Aviation Regulation (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new AD:

Rolls-Royce Limited: Applies to Rolls-Royce RB211–22B and RB211–524 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent IP compressor and IP turbine disk failures, as a result of overspeeding which can cause uncontained engine failures, accomplish the following in accordance with the compliance schedules of Rolls-Royce Mandatory SB RB.211–72–5887, Revision 2, dated August 23, 1985, or FAA approved equivalent:

(a) Remove IP compressor rotor assemblies and IP turbine disks that have been oversped beyond 115 percent N2 through and including 120 percent N2. Assemblies may be reinstalled after obtaining a satisfactory inspection as directed in the SB.

(b) Remove from service IP compressor rotor assemblies and IP turbine disks that have been oversped beyond 120 percent N2.

Aircraft may be ferried in accordance with the provision of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on February 11, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–5202 Filed 3–10–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AGL–4]

Proposed Establishment of Transition Area—Paxton, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Paxton, Illinois transition area to accommodate a new VOR Runway 18 instrument approach procedure to Paxton Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before April 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to:
Federal Aviation Administration,
Regional Counsel, AGL–7,
Attn: Rules Docket No. 86–AGL–4,
2300 East Devon Avenue,
Des Moines, Illinois 60018

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Moines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Moines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Moines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The development of a new VOR Runway 18 instrument approach procedure requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace.

The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AGL–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition airspace area near Paxton, Illinois.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Paxton, IL

That airspace extending upward from 700 feet above the surface, within a 5 mile radius of Paxton Airport (lat. 40°26'55" N., long. 88°07'40" W.) and within 3 miles each side of the 166° radal of the Roberts VORTAC, extending from the 5 mile radius area to the Roberts VORTAC, excluding that portion which overlies the Gibson City, Illinois, transition area.

Issued in Des Plaines, Illinois, on February 21, 1986.

Kenneth C. Patterson,
Manager, Air Traffic Division.

[FR Doc. 86–5204 Filed 3–10–86; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 862 3006]

Albert Schneider; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the President of Cellular Capital Corporation to cease making misrepresentations to induce consumers to purchase application preparation services for the cellular license lottery operated by the Federal Communications Commission. Additionally, respondent would be required to make two affirmative disclosures to prospective applicants: (1) That the purchase of a cellular application is a high-risk investment, and (2) that an operating cellular system is unlikely to return any profits to its owners in the first three years of operation.

DATE: Comments must be received on or before May 12, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/H-272, Michael McCarey, Washington, DC 20580. (202) 523-1415.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Cellular lottery preparation services, Trade practices.

Commissioners: Terry Calvani, Acting Chairman; Patricia P. Bailey, Mary L. Azcuenaga.

In the Matter of Albert Schneider, Agreement Containing Consent Order to Cease and Desist; File No. 862-3006.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Albert Schneider and it now appearing that Albert Schneider is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by Albert Schneider and counsel for the Federal Trade Commission that:

1. Albert Schneider is President of Cellular Capital Corporation, a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal office located at One Erieview Plaza, Eighth Floor, Cleveland, Ohio 44144. As such, he formulates, directs, and controls the acts and practices of said corporation, and his address is the same as that of said corporation.

2. Albert Schneider admits all the jurisdictional facts set forth in draft of complaint here attached.

3. Albert Schneider waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) Any claim under the Equal Access to Justice Act, 28 U.S.C. 2412.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the complaint filed in the district court, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may withdraw its acceptance of this agreement and so notify the proposed respondent.

5. This agreement is for settlement purposes only and does not constitute an admission by Albert Schneider that the law has been violated as alleged in the draft of complaint here attached or that any statements alleged in such complaint are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Albert Schneider, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Albert Schneider's address as stated in this agreement shall constitute service. Albert Schneider waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order. Upon issuance of the order, the Commission shall dismiss the complaint in the district court with prejudice as it relates to Albert Schneider, subject only to the right of the Commission to reopen the proceeding pursuant to the provisions of Paragraph IV of this Order.

7. Albert Schneider has read the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Albert Schneider further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that Respondent Albert Schneider, his agents, representatives, brokers, and employees, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, and each of them, directly or indirectly, in the promotion, offering for sale or sale of any non-wireline cellular telephone system application preparation service, do forthwith cease and desist from the following activities:

(1) Representing, directly or indirectly, that any applicant in the Federal Communications Commission ("FCC") non-wireline cellular telephone license lottery ("lottery") is certain or substantially certain to obtain all or part of a cellular telephone license ("license"), or otherwise misrepresenting the likelihood that an applicant will obtain all or part of a license;

(2) Representing, directly or indirectly, that past agreements to share licenses (settlement agreements) entered into by applicants in the second and third tiers of the FCC lottery provide a basis for concluding that future applicants in the FCC lottery are likely to receive an interest in a license through similar agreements;

(3) Misrepresenting, directly or indirectly, the value or profit potential of a license awarded through the FCC lottery. At the time of making any representation of value or profit potential, defendant must possess and rely upon a reasonable basis for the representation consisting of competent and reliable data;

(4) Misrepresenting, directly or indirectly, past or current profit performance of cellular telephone systems; or making any representation regarding past or current profit performance of cellular telephone systems unless at the time of making such representation defendant possesses and relies upon a reasonable basis consisting of competent and reliable data;

(5) Misrepresenting, directly or indirectly, any financing arrangements made for purchasers of defendant's application services;

(6) Misrepresenting, directly or indirectly, the nature of the services provided by the application preparers or the qualifications of those providing technical services;

(7) Misrepresenting, directly or indirectly, any material fact relevant to a customer's decision to purchase application preparation services for the FCC lottery; and

(8) Making any representations with respect to income tax benefits available to purchasers of defendant's products or services other than to refer the prospective applicant to their own tax accountant or attorney.

II

It is further ordered that Respondent Schneider, his agents, representatives, brokers and employees, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise and each of them, directly or indirectly, in the promotion, offering for sale or sale of any non-wireline cellular telephone system application preparation service are hereby enjoined from failing to disclose to prospective applicants statements (1) and (2) below in all sales brochures, in every oral presentation, and on the front page of all sales or service contracts or agreements with ultimate consumers:

(1) "The purchase of an application for the Federal Communication Commission's cellular telephone lottery is a high-risk investment. Do not purchase an application unless you can afford and are prepared to lose all the money invested."

(2) "An operating cellular system is unlikely to return any profits to its owners in at least the first three years of operation."

It is further ordered that the statements required above shall be set forth in a clear and conspicuous manner in print at least as large as the capitalized corporate name within the text of the brochure, contract or agreement then used by the defendant(s), but in no event smaller than 10 point type; that such disclosure shall be in 100% black ink against a light background, and boxed; that the copy of the foregoing statements set forth on the front page of each sales or service agreement or contract shall be preceded by the heading "RISK FACTORS YOU SHOULD CONSIDER PRIOR TO PURCHASE", and shall also include a signature line for the customer preceded by a declaration that the customer has read and understands the statement; and that no agreement or contract shall be deemed valid or complete unless the customer has signed and dated the required declaration.

III

It is further ordered that Respondent Schneider shall fully comply with the Paragraphs IV and VII of the Consent Decree and Permanent Injunction entered by the United States District Court for the Northern District of California in the case *Federal Trade Commission v. The Cellular Corporation, et al.* (Civ. No. C85-8231 WHO), which paragraphs are attached hereto and incorporated herein.

IV

It is further ordered that this settlement agreement is premised on the sworn financial statements of Respondent Schneider previously provided to the Commission. If the Commission finds any material misstatement or misrepresentation in the sworn financial statements, that finding shall cause this Order to be set aside and the Commission in that event shall be permitted to reopen this matter and proceed against Respondent Schneider to the full extent of any possible monetary liability he may have for the acts and practices alleged in the Commission's complaint in this matter in excess of the liability imposed herein. Prior to the making of any such motion, the Commission will notify Respondent Schneider of any alleged discrepancy and provide him with a reasonable opportunity to explain or justify the disputed entry.

V

It is further ordered that Respondent Schneider shall immediately provide a copy of this Order to each officer, employee, sales representative, or independent contractor engaged in the promotion or sale of respondent's non-wireline MSA cellular telephone system application preparation services.

VI

It is further ordered that Respondent Schneider shall, within sixty (60) days after the order is approved by the Commission, file with the Federal Trade Commission a report setting forth in detail the manner and form in which he has complied with this order.

Attachment

IV

It is further ordered that defendants TCC, CCC, Spectra, Wilson and Maerki shall contribute the sum of $400,000 to be used to complete the application process. Upon entry of this Order, $60,000 shall be deposited in a segregated account subject to the supervision of the Federal Trade Commission, which sum shall be earmarked for the final amounts required to be paid under this paragraph. The $400,000 sum obligated under this paragraph shall be used solely for necessary and proper expenses relating to the preparation, completion and filing of applications for the 5th tier of the FCC's cellular telephone license lottery, paid or accrued from December 1, 1985 through March 31, 1986, and cannot be used for payments, directly or indirectly, to defendants Wilson, Maerki or Schneider, whether in the form of salaries or otherwise. On or before April 15, 1986, the Defendants shall submit to the Federal Trade Commission a detailed account of all sums expended or accrued for this purpose from December 1, 1985 to date. Any difference between $400,000 and the amount actually expended or accrued for preparation, completion and filing of said applications from December 1, 1985, through March 31, 1986, as approved by the FTC, shall be paid to the Federal Trade Commission on or before June 1, 1986 to provide redress to consumers pursuant to a plan approved by the Commission. *Provided, however,* that the FTC shall have discretion to pay over the funds received to the United States Treasury, if the FTC determines in light of the administrative or distribution costs of redress that such action is in the public interest.

VII

It is further ordered that defendant TCC shall notify by mail all persons who are obligated to it for a portion of the purchase price for its lottery application services, pursuant to a limited recourse note or otherwise (the "Note"), advising them that the Note is due and payable only out of revenues from the operation of the cellular system and/or from the sale of his/her interest in the license and shall be enjoined from collecting or attempting to collect on the Notes in any manner inconsistent with this reformation. Nothing in this paragraph shall prevent defendants from discounting the Notes or preclude defendant TCC from assigning, hypothecating or otherwise disposing of any Note for such consideration as defendant TCC in its sole discretion deems appropriate; provided, however, that any taker of any Note from TCC shall be notified of and be bound by the reformation provisions contained in this paragraph.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Albert Schneider, President of Cellular Capital Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Albert Schneider has made misrepresentations of material facts to induce consumers to purchase application preparation services for the cellular license lottery operated by the Federal Communications Commission (FCC). The complaint futher alleges that, in light of the representations made, consumers are likely to be misled by Mr. Schneider's failures to disclose certain material facts, including the fact that the purchase of cellular application services is a high-risk investment.

The proposed consent order would prohibit Mr. Schneider, and persons in active concert or participation with him, from misrepresenting any fact "material to a customers's decision to purchase application services for the FCC lottery." In particular, he would be prohibited from making any representation that an applicant in the FCC lottery "is certain or substantially certain to obtain all or part of a cellular telephone license." He would also be required to make two affirmative disclosures to prospective applicants: (1) That the purchase of a cellular application is a high-risk investment and (2) that an operating cellular system is unlikely to return any profits to its owners in the first three years of operation.

Under the agreement, Mr. Schneider and certain individuals working with him would be required to spend up to $400,000 from December 1, 1985 to March 15, 1986 for the completion of the cellular applications that they have agreed to prepare. Any difference between $400,000 and the amount actually expended would be paid to the Federal Trade Commission.

Consumer redress would be provided by the reformation of the $10,000 limited recourse notes used by most of Mr. Schneider's customers to pay for a portion of the application price. The notes now provide that they are automatically due two years from the date that the applicant or the applicant's settlement group receives a construction permit from the FCC. They would be rewritten to provide that they are payable only out of revenues from the operation of the cellular system and/or from the sale of the applicant's interest in the cellular license.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-5227 Filed 3-10-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Solicitation of Public Comments Regarding Tariff Classification of Prefinished Hardboard Siding

AGENCY: Customs Service, Treasury.

ACTION: Solicitation of public comments.

SUMMARY: Customs is reviewing its position regarding the tariff classification of certain imported prefinished hardboard lap siding. The product in question is a plank of hardboard, 7/16-inch thick, and either 9 or 12 inches wide. Approximately 1-inch from the bottom, a hard plastic locking strip or "spline" is fixed into a groove in the back of each plank. The top edge of each plank is machined to form a groove or "rabbet", which fits the spline in the plank above. The planks are prefinished at the time of importation with acrylic latex paint. The current tariff classification was challenged administratively by the filing of a domestic interested party petition. That petition was denied by Customs. In the subsequent court proceeding contesting the denial by Customs, an alternative classification not previously considered was suggested. Customs has been directed by the court to consider the alternative classification, which we are publishing for public comments in order to make an administrative decision on the claim. The Court further directed Customs to communicate its administrative decision within 60 days from the date of the Court order, January 27, 1986.

DATE: Comments (preferably in triplicate) must be received on or before April 10, 1986.

ADDRESS: Comments may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Jeremy N. Baskin, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its position regarding the tariff classification of certain imported prefinished hardboard lap siding. The product in question is a plank or hardboard, 7/16-inch thick, and either 9 or 12 inches wide.

Approximately 1 inch from the bottom, a hard plastic locking strip or "spline" is fixed into a groove in the back of each plank. The top edge of each plank is machined to form a groove or "rabbet", which fits the spline in the plank above. The planks are prefinished at the time of importation with acrylic latex paint. The current tariff classification is under the tariff provision for "Other boards, of vegetable fibers (including wood fibers) . . .", in item 245.90, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), a duty-free provision.

Customs published a notice in the **Federal Register** on March 22, 1982 (47 FR 12258), acknowledging receipt of a petition form a domestic interested party filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). The notice solicited public comments on the merits of the petition. The deadline for receipt of comments was subsequently extended by a **Federal Register** notice published on May 27, 1982 (47 FR 23249). The petitioner claimed that the proper classification of the siding should be under the tariff provision for other hardboard in item 245.30, TSUS. The current duty rate under item 245.30, TSUS, is 7.5 percent ad valorem.

In accord with proper administration practice, by a ruling dated October 29, 1982, Customs informed the petitioner that the comments solicited by the March 22, 1982, notice had been considered and, upon review of the matter, it was decided to deny the petition and to continue to classify the imported siding in item 245.90, TSUS.

In response to the October 29, 1982, ruling, by letter of November 29, 1982, the petitioner filed notice of its intention to contest the decision in accordance with § 516(c), Tariff Act of 1930, as

amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

By publication of T.D. 83–104 in the **Federal Register** on May 11, 1983 (48 FR 21231), Customs informed the public of the petitioner's desire to contest the decision, and gave a detailed account of the proceedings to that date together with a full explantion of the reason for denying the petition.

In the subsequent proceeding contesting the classification before the Court of International Trade, *American Hardboard Assocaition* v. *United States and MacMillan Blodel, Ltd.*, Party-in-Interest, Court No. 83–9–01301, a tariff classification not previously considered was suggested. On January 27, 1986, the Court remanded the case for decision on the correctness of the current tariff classification as opposed to the newly suggested alternative classification under the provisions for "Building boards. . . Laminated boards. . .", in tiem 245.80, TSUS. Materials classified under item 248.80, TSUS, are currently subject to a compound rate of duty of 1.4 cents per pound, plus 2.6 percent ad valorem.

Accordingly, in order to properly consider the issue Customs is requesting the views of the public on classification of the imported prefinished hardboard lap siding in item 245.80, TSUS, as opposed to classification in item 245.90, TSUS. A comment period of 30 days is being allowed in view of the short deadline imposed upon Customs by the Court to report on our decision.

Comments

Before making a determination on this matter, Customs will consider any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquaters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs office participated in its development.

William von Raab,

Commissioner of Customs.

Approved: February 24, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86–5376 Filed 3–10–86; 9:34 am]

BILLING CODE 4820–02–M

Internal Revenue Service

26 CFR Part 1

[LR–3–77]

Income Tax; Recapture of Overall Foreign Losses

Correction

In the document beginning on page 3193, in the issue of Friday, January 24, 1986, make the following corrections:

1. On page 3193, in the third column, in the last paragraph, in the eighth line, "904(d)(1)(EA)" should read "904(d)(1)(E)".

2. On page 3194, in the second column, in the first complete paragraph, in the eighteenth line, "§ 1.904 (f)–(d)" should read "§ 1.904 (f)–1(d)".

3. On page 3196, in the second column, in the first complete paragraph, in the nineteenth line, "national" should read "notional".

§ 1.904(f)–1 [Corrected]

4. On page 3197, in § 1.904(f)–1(a), in the second column, in the twelfth line from the top of the page, "904(d)(E)" should read "904(d)(1)(E)". In the same column, in paragraph (b), in the sixth line from the bottom of the paragraph, "Form 116" should read "Form 1116", and in the fourth line from the bottom, "blance is" should read "balance in".

5. On page 3198, in § 1.904(f)–1(d)(3)(ii)(A), in the first column, in the third line of paragraph (A), between "capital" and "loss" insert "gain net income reduced by the foreign source net capital".

6. On page 3199, in § 1.904(f)–1(f), in the first column, in the twentieth line from the top of the page, "904(d)(1)(e)" should read "904(d)(1)(E)".

§ 1.904(f)–2 [Corrected]

7. On page 3199, in the third column, in § 1.904(f)–2(c), in the second line, "mount" should read "amount".

8. On page 3200, in the first column, in Example (4), in the fifteenth line, "904(d)(1)(E)(B)" should read "904(d)(1)(B)".

9. On page 3201, in the first column, in § 1.904(f)–2(d)(4)(iii), in the second line, "of" should read "to".

§ 1.904(f)–3 [Corrected]

10. On page 3202, in the third column, § 1.904(f)–3(a), in the tenth line from the bottom of the page, "carryback" should read "carryover".

§ 1.1502–9 [Corrected]

11. On page 3206, in the first column, § 1.1502–9(a), in the eleventh line from the bottom of the page, "national" should read "notional". In the second column, in paragraph (iii), in the sixth line, "oveall" should read "overall".

12. On page 3208, in the third column, in the file line at the end of the document, the FR Doc. number should read "86–1463".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 85–349]

47 CFR Part 76

Amendment of the Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems; Extension of Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; Extension of reply comment period.

SUMMARY: Action taken herein extends the time for filing reply comments in response to the *Notice of Inquiry and Notice of Proposed Rule Making* in MM Docket No. 85–349. This *Notice* requested comments and specific rule proposals regarding matters concerning carriage of television broadcast stations by cable television systems. The National Association of Broadcasters and the National Cable Television Association requested the extension of time.

DATE: Reply comments are due March 21, 1986.

ADDRESS: Federal Communications Commission Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION:

Order Granting Request for Extention of Time To File Reply Comments

In the matter of Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television System; MM Docket No. 85–349.

Adopted: February 28, 1986.

Released: March 3, 1986.

By the Acting Chief, Mass Media Bureau.

1. On November 14, 1985, the Commission adopted a combined *Notice of Inquiry and Notice of Proposed Rule Making* (*Notice*) in MM Docket No. 85–349, 50 FR 48232, to consider the matter of cable carriage of broadcast television signals. Reply comments in this proceeding are currently due March 4, 1986, pursuant to an *Order Extending Time for Filing Reply Comments* that was issued on February 21, 1986 (Mimeo No. 2767).

2. On February 27, 1986, the National Association of Broadcasters (NAB) and the National Cable Television Association (NCTA) submitted a joint motion to extend the date for filing reply comments in the proceeding referenced above until March 21, 1986. The parties state that they reached a compromise agreement on February 27, 1986, to recommend to the Commission new requirements for the carriage of local television broadcast signals by cable systems. The Television Operators Caucus (TOC) and the Independent Television Association (INTV) are also parties to the agreement. The NAB and NCTA indicate that the extension is necessary to permit the NCTA to obtain approval of its board of directors which is scheduled to meet on March 19, 1986. They also submit that they believe that it is important to file reply comments consistent with the compromise agreement.

3. As we stated in the *Notice*, we believe that it is important that the must carry proceeding be completed expeditiously. However, we also recognize the significance of this matter to broadcasters, cable operators, and the public. In this respect, we believe it is desirable to give consideration to the forthcoming must carry compromise agreement between broadcast and cable interests. Thus, we find that the requested 17-day extension is warranted to permit the necessary NCTA board approval and the filing of reply comments reflecting the results thereof.

4. Accordingly, It is ordered that the date for filing reply comments in response to the above-reference *Notice of Inquiry and Notice of Proposed Rule Making* is extended to March 21, 1986. This action is taken pursuant to authority provided in 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules.

5. For further information concerning this proceeding, contact Alan Stillwell, Mass Media Bureau, (202) 632–6302.

Federal Communications Commission.

William H. Johnson.

Acting Chief, Mass Media Bureau.

[FR Doc. 86–5240 Filed 3–10–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Lindera Melissifolia (Pondberry)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Service reopens the comment period on the proposal to determine *Lindera melissifolia* (Walt.) Blume (pondberry) to be an endangered species under authority of the Endangered Species Act of 1973, as amended (Act). The Service seeks data and comments from the public on this proposal.

DATE: Comments from all interested parties must be received by April 10, 1986.

ADDRESSS: Comments and materials concerning this notice should be sent to Mr. V. Gary Henry, Acting Field Supervisor, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address, (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule published in the Federal Register (50 FR 32581) the Service proposed that *Lindera melissifolia* (pondberry), a small wetland shrub limited to 18 locations in the Southeastern United States, be designated an endangered species under the authority of the Endangered Species Act of 1973, as amemnded. *Lindera melissifolia* is endangered by land clearing operations, timber harvesting, drainage activities, and encroachment by competitor species. That proposal, if made final, would implement the protection provided by the Act for *Lindera melissifolia*.

The Act requires that a legal notice of proposed rules, such as the one for *Lindera melissifolia*, be published in local newspapers during the comment period for the proposed rule. Inadvertently, the Service did not publish a newspaper notice in a newpaper within the vicinity of the two Mississippi populations. The purpose of this action is to reopen the comment period for this proposed rule, publish newspaper notices in Mississippi, and thereby meet all public notification requirements of the Act. The appropriate Federal, State, and local officials, landowners, and other interested parties throughout the range of pondberry, including Mississippi, were informed of this proposal during the original comment period which extended from August 13, 1985, through September 27, 1985.

Author

The primary author of this notice is Mr. Robert R. Currie, Endangered Special Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–932, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlfife, Fish, Marine mammals, Plants (agricuture).

Dated: March 3, 1986.

James W. Pulliam, Jr.,

Regional Director, Southeast Region, U.S. Fish and Wildlife Service.

[FR Doc. 86–5212 Filed 3–10–86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 47
Tuesday, March 11, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA)
Title: Unemployment Insurance Benefit Payments by County
Form number: Agency—N/A; OMB—0608–0038
Type of request: Extension of a currently approved collection
Burden: 26 respondents; 156 reporting hours
Needs and uses: BEA requests data directly from the responsible State agencies to produce county estimates of unemployment insurance benefit payments, part of county estimates of personnal income.
Affected public: State or local governments
Frequency: Annually
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: March 5, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86–5218 Filed 3–10–86; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-549-502]

Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes From Thailand

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the United States Department of Commerce determined that circular welded carbon steel pipes and tubes from Thailand were being sold at less than fair value within the meaning of the antidumping duty law. In a separate investigation, the United States International Trade Commission (the ITC) determined that circular welded carbon steel pipes and tubes from Thailand are materially injuring a United States industry. Additionally, the Department and the ITC found that "critical circumstances" do not exist with respect to circular welded carbon steel pipes and tubes from Thailand. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of Circular Welded Carbon Steel Pipes and Tubes from Thailand made on or after October 3, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5404 or (202) 377–5288.

SUPPLEMENTARY INFORMATION: The products under investigation are certain circular welded carbon steel pipes and tubes (referred to in this notice as "pipes and tubes"), also known as "standard pipe" or "structural tubing," which includes pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness, as currently provided in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the *Tariff Schedules of the United States Annotated* (TSUSA).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on October 3, 1985, the Department published its preliminary determination that there was reason to believe or suspect that circular welded carbon steel pipes and tubes were being sold at less than fair value (50 FR 40427). On January 27, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 3384).

On February 21, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipes and tubes from Thailand. These antidumping duties will be assessed on all unliquidated entries of pipes and tubes entered, or withdrawn from warehouse, for consumption on or after October 3, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (50 FR 40427).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

MANUFACTURERS/PRODUCERS

Exporters	Weighted-average margins (pct)
Saha Thai Steel Pipe Co	15.69
Thai Steel Pipe Industry Co	15.60
All other manufacturers/producers	

MANUFACTURERS/PRODUCERS—Continued

Exporters	Weighted-average margins (pct)
Exporters	15.67

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subisidies. In the final countervailing duty determination on certain circular welded carbon steel pipes and tubes from Thailand, we found export subsidies (50 FR 32751). Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Thus, the amount of the export subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

This determination constitutes an antidumping order with respect to pipes and tubes from Thailand, pursuant to section 736 of the Act (19 U.S.C 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

March 4, 1986.

[FR Doc. 86-5249 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-501]

Amended Anitdumping Duty Order; Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China (PRC)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On February 14, 1986, the United States Department of Commerce (the Department) published an antiumping duty order in the **Federal Register** stating that all unliquidated entries, or warehouse withdrawals, for consumption of this product made on or after February 14, 1986, the date of publication of the order, would be liable for the assessment of antidumping duties.

This amended order changes the effective date for the assessment of antidumping duties to February 6, 1986, the date of publication of the notice of an affirmative determination of threat of material injury by the International Trade Commission (ITC), in accordance with the "Special Rule" provision of section 736(b)(2) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone (202) 377–4136 or (202) 377–5288.

John L. Evans,

Acting Deputy Assistant Secretary, Import Administration.

March 4, 1986.

[FR Doc. 86-5250 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-507-502]

Certain In-Shell Pistachios From Iran; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain in-shell pistachios from Iran are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by May 19, 1986.

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: telephone: (202) 377–1769.

Preliminary Determination

We have preliminarily determined that certain in-shell pistachios from Iran are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We found that all sales during the period of investigation were at less than fair value. The weighted-average margin is 192.54 percent. We have preliminarily determined that "critical circumstances" exist with respect to pistachios from Iran.

Case History

On September 26, 1986, we received a petition from the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Keenan Farms, Inc., Kern Pistachio Hulling & Drying Co-op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T.M. Duché Nut Co., Inc. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of certain in-shell pistachios (pistachios) from Iran are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threaten material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated an investigation on October 15, 1985 (50 FR 42978). On November 12, 1985, the ITC determined that there was a reasonable indication that imports of pistachios from Iran were materially injuring, or threatening material injury to, a U.S. industry (US ITC Publication 1777).

On October 25, 1985, we presented a questionaire to the Rafsanjan Pistachio Cooperative since it was the only known seller of pistachios from Iran. We received a response on November 26, 1985 from the Government of the Islamic Republic of Iran through the Embassy of the Democratic and Popular Republic of Algeria. We requested additional information since the initial response was inadequate for use in a preliminary determination. On January 10, January 15, and January 24, 1986, we received additional responses to the initial October 25, 1985 questionaire. By

correspondence of January 30, 1986, the Department declared the combined additional responses of January 10, January 15, and January 24, 1986, to be inadequate for purposes of a preliminary determination since the respondent did not know the destination of the pistachios it sold. On January 30, 1986, the Department sent questionaires to the Rafsanjan Pistachio Cooperative to be forwarded to their customers who export the subject merchandise to the United States. If timely and complete responses are received from these customers, they will be used for our final determination.

Product Under Investigation

The product covered by this investigation is in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and the edible meat, as currently provided for under item number 145.26 of the *Tariff Schedule of the United States* (TSUS). The period of investigation is April 1, through September 30, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less then fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act, because appropriate responses were not submitted.

United States Price

For purposes of our preliminary determination, we have not used sales data presented by respondents to calculate United States price since it did not contain data regarding specific quantities and prices for pistachios sold for export to the United States. We determined United States price on the basis of the average F.A.S. values for the six month period of investigation as derived from the IM 145 statistics compiled by the Bureau of Census.

Foreign Market Value

We have used price information provided in the petition, as the best information available, pursuant to section 776(b) of the Act since we did not have specific data respective to quantities and prices for pistachios sold in the home market. The price information used from the petition was the price for a representative grade in May 1985.

Preliminary Affirmative Critical Circumstances Determination

Petitioners have alleged that imports of certain in-shell pistachio nuts present "critical circumstances" within the meaning of section 733(e)(1) of the Act. Critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (a) There is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value; and (c) there have been massive imports of the merchandise under investigation over a relatively short period. In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of the first two of these three factors, we have determined that imports from Iran have been massive.

In preliminarily determining whether there is a history of dumping pistachios from Iran in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries made available through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no final determination on pistachios from Iran. Therefore, we did not find the requisite history of dumping of the class or kind of merchandise.

The second criterion is whether the importers knew, or should have known, that the exporter was selling the merchandise at less than fair value. We normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the margins in this case exceed this level, we find that knowledge of sales at less than fair value can be imputed to the importers.

For the reasons described above, we preliminarily determine that critical circumstances exist with respect to Pistachios from Iran.

Verification

If timely and complete submissions are provided, in accordance with section 776(a) of the Act, we will verify them for use in our final determination by using standard verification procedures, including examination of revelant sales, financial and cost records of the companies.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain in-shell pistachios from Iran. Liquidation shall be suspended on all unliquidated entries filed for consumption on or after December 11, 1986. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to the investigation exceeds the United States price. In the case of in-shell pistachios the amount is 192.54%. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement of Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the final affirmative countervailing duty determination on Pistachios from Iran will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days

after we make our final determination. In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 2:00 p.m. on April 2, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B–099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 25, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

John L. Evans,

Acting Deputy Assistant Secretary for Import Administration.

March 5, 1986.

[FR Doc. 86–5251 Filed 3–10–86; 8:45 am]

BILLING CODE 3510-DS-M

[C–507–501]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; In-Shell Pistachios From Iran

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to growers, processors, or exporters in Iran of in-shell pistachios. The estimated net bounty or grant is 99.52 percent *ad valorem.*

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of in-shell pistachios from Iran that are entered, or withdrawn from warehouse, for consumption on or after December 30, 1985, and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: March 11, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3174 or (202) 377–2438.

SUPPLEMENTARY INFORMATION:

FINAL DETERMINATION

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to growers, processors, or exporters in Iran of in-shell pistachios. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Preferential Exchange Rate for Exporters.
- Foreign Exchange Retention Scheme.
- Price Support/Guaranteed Purchase of all Production.
- Preferential Provision of Fertilizer and Machinery.
- Credit on Terms Inconsistent with Commercial Considerations.
- Tax Exemptions.
- Preferential Provision of Water and Irrigation.
- Preferential Provision of Technical Support.

We determine the estimated net bounty or grant for in-shell pistachios to be 99.52 percent *ad valorem.*

Case History

On September 26, 1985, we received a petition in proper form filed by the California Pistachio Commission, Blackwell Land Company, California Pistachio Orchards, Keenan Farms Inc., Kern Pistachio Hulling and Drying Co-op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T. M. Duché Nut Company, Inc., on behalf of growers and processors in the U.S. pistachio nuts industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that growers, processors, and exporters in Iran of pistachios receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Iran is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, the petitioners are not required to allege that, and that U.S. International Trade Commission is not required to determine whether, imports of this product materially injure, or threaten material injury to, a U.S. industry (19 U.S.C. 1303(a)(1), (b)).

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 16, 1985, we initiated such an investigation (50 FR 42980). We stated that we expected to issue a preliminary determination on or before December 20, 1985.

We presented a detailed questionnaire to the government of Algeria in Washington, DC on October 25, 1985, and requested that the Embassy forward the questionnaire to the appropriate Iranian authorities in its capacity as the protecting power for Iran in the United States. We requested a response to our questionnaire by November 25, 1985. On November 27, 1985, the Embassy of Algeria forwarded to the Department a message from the Iranian authorities requesting that the deadline for submitting a response be extended by two months. On December 6, 1985, we informed the Iranian authorities, through the Embassy of Algeria, that if we did not receive a response to our questionnaire by December 9, 1985, we might have to use the best information available for our preliminary determination. We did not receive a response on December 9, either from the government of Iran or the growers, processors, or exporters of the subject merchandise in Iran.

On December 20, 1985, we made our preliminary affirmative determination stating that benefits which constitute bounties or grants are being provided to growers, processors, or exporters in Iran of in-shell pistachios (50 FR 53178). Because we had not received a response from the respondents, we based our preliminary determination on the best information available, which was information supplied by the petitioners.

On December 30, 1985, the government of Iran filed an incomplete response to the Department's questionnaire. On January 3, 1986, the government of Iran requested that the deadline for a response be further extended. On January 17, 1986, we informed the government of Iran that we would consider for our final determination a complete response if submitted to us in proper form no later than January 24, 1986.

On January 27, 1986, two months after the original due date for a complete response, the government of Iran submitted a partial response to our questionnaire. We thoroughly reviewed

this partial response of the Iranian government and determined that none of the questions in the questionnaire was answered adequately. The response failed to provide even the most basic information requested in all countervailing duty questionnaires such as laws and regulations governing the alleged bounty or grant programs. The submission also did not include most of the official government documents and statistical reports requested, and omitted specific information pertaining to agricultural cooperatives, in particular the Rafsanjan Pistachio Producers Cooperative. The response also did not provide meaningful information regarding the Iranian financial system and lending practices. Such information is a necessary part of any response, because it provides the Department with the information to identify the normal commercial patterns of financial transactions in a given country. In relation to specific questions on the alleged programs, the response either denied outright the existence of the programs or stated that there was no preferential provision of benefits under the programs. Although we must consider each response in a given case individually, in this instance the omissions, particularly considering the late date of the submission, are of such a degree as to render the response inadequate.

On February 7, 1986, we informed the government of Iran, through the government of Algeria, that the December 30, 1985 and the January 27, 1986 responses were inadequate and that, therefore, our final determination would be based on the best information available, as required by § 355.39 of our regulations (19 CFR 355.39).

Scope of Investigation

The product covered by this investigation is in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and the edible meat, currently specifically provided for under item 145.26 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Because we did not receive a sufficient response to our questionnaire, we are using the best information available as required under § 355.39 of our regulations (19 CFR 355.39), adversely inferring countervailability and receipt of benefits. The Department has no record of past countervailing duty investigations or administrative reviews involving Iran and, therefore, we are unable to include our own information in determining whether the benefits alleged in the petition are bounties or grants within the meaning of the countervailing duty law. In addition, we have been unable to obtain information from independent sources regarding the alleged bounties or grants that would supplement or replace that supplied by the petitioners. Therefore, as best information available, we are using petitioners' information, where provided, regarding the countervailability and level of benefits of the alleged bounty or grant programs.

For certain domestic programs, the petitioners did not provide a numerical estimate of the level of benefit, or information from which no calculate a benefit consistent with Department practice. For each of these alleged domestic bounties or grants, we are applying, as best information available, the *ad valorem* subsidy rate from that domestic program for which petitioners did supply information from which to calculate benefit. In addition, for the sales values used in calculating the *ad valorem* rates for the domestic bounties or grants, we are using, as baest information available, the total production values provided in the response. We are using these values because petitioners provided no information on total production values and we were unable to generate figures.

Programs Determined To Confer Bounties or Grants

I. We determine that bounties or grants are being provided to growers, processors or exporters in Iran of in-shell pistachios under the following programs.

A. Preferential Exchange Rate

Petitioners allege that exporters of pistachios in Iran are entitled to exchange foreign currency earned from export sales at a premium of 10 percent above the official rate and that this preferential rate is limited to exporters.

As best information available, we determine that the growers, processors, and exporters under investigation received an additional 10 percent above the official exchange rate on repatriated foreign exchange earned from export sales. On this basis, we determine an estimated net bounty or grant of 10.00 percent *ad valorem*.

B. Foreign Currency Retention Scheme

Petitioners allege that exporters of pistachios in Iran may benefit from retained foreign exchange earned from export sales. According to information submitted in the petition, exporters of pistachios in Iran may benefit from retained currency in two ways.

First, the exporter may use the extra foreign exchange gained as a result of the preferential exchange rate to import goods for resale in Iran at whatever price the market will bear. According to the petition, the free market price of imported goods is often five to six times higher than the price set by the government of Iran.

Second, a pistachio exporter may sell retained foreign exchange at the free market rate to any person in Iran with a need for foreign currency. According to the most recent International Monetary Fund statistics provided by the petitioners, there is a signficant difference between the official and free market dollar/rial exchange rate.

Because we have not received an adequate response in this investigation, we have no information beyond that in the petition to use in analyzing this program. We have no way of knowing whether pistachio exporters in Iran do, in fact, have the ability to import goods and sell them, or foreign exchange gained from export sales at a premium over official prices or exchange rates, and whether this right would confer a countervailable benefit. Therefore, as best information available, we determine that this program confers a bounty or grant. To calculate the benefit, we assume that the exporters use both methods of foreign exchange retention, and we averaged the two estimates of benefits provided by the petitioners. On this basis, we determine an estimated net bounty or grant of 46.86 percent *ad valorem*.

C. Price Support/Guaranteed Purchase of all Production

Petitioners allege that pistachio growers in Iran may benefit from a government agricultural policy of guaranteeing the purchase of, and subsidizing prices for, certain major food commodities. Petitioners contend that the government of Iran gave the Rafsanjan Cooperative, the country's principal pistachio cooperative, a $100 million loan on terms inconsistent with commercial considerations to purchase and stockpile pistachios, as a means by which to implement government agricultural policy.

Because we did not receive an adequate response in this investigation we are assuming, as best information available, that this type of financing is limited to a specific enterprise, or industry or group of enterprises or industries, and that loan was extended on terms inconsistent with commercial considerations.

Peitioners have suggested that we treat this loan as a long-term, cost-free

loan and that the benefit be calculated consistent with the Department's methodology as outlined in the *Subsidies Appendix* for long-term loans (*see*, "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina," 49 FR 18006). We have assumed that the loan was given in 1983, when, according to information supplied by the petitioners, the Iranian banks still operated under a system of charging interest on loans. To determine a benchmark interest rate for loans in Iran, we are relying on information contained in the *Middle East Economic Digest*, submitted by the petitioners. This publication indicates that interest rates on bank loans in 1983 ranged from 12 to 18 percent. To quantify the benefit from this loan, we assumed the loan was given interest free and used 18 percent as our commercial benchmark rate. Because information in the record of this investigation indicates that the Rafsanjan Pistachio Producers Cooperative is the only pistachio cooperative in Iran, we divided the benefit received during the review period by the total value of pistachio production in the response and calculated an estimated net bounty or grant of 7.11 percent *ad valorem*.

D. Preferential Provision of Fertilizer and Machinery

Petitioners allege that agricultural cooperatives, such as the Rafsanjan Cooperative, can obtain fertilizer and machinery from the government at preferential prices.

According to the petition, the extent of the benefit varies with the crop produced. Petitioners further allege that these cooperatives, in turn, provide both fertilizer and machinery to their members on a preferential basis.

Because the respondents did not provide an adequate response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

E. Preferential Credit

Petitioner's allege that agricultural cooperatives in Iran make credit available on terms inconsistent with commercial considerations from funds provided by the government to their members. Petitioners argue that the Rafsanjan Cooperative is the principal cooperative for pistachios in Iran and that this organization may provide loans on terms inconsistent with commercial considerations to its members. Because the respondents did not provide an adequate response in this case and the peititoners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

F. Tax Exemptions

Petitioners allege that pistachio farmers may benefit from legislation exempting farmers and livestock breeders from paying taxes, provided they follow government agricultural guidelines.

Because the respondents did not provide an adequate response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. We determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

G. Preferential Provision of Water and Irrigation

Petitioners allege that pistachio growers in Iran may benefit from construction of soil dams, flood barriers, canals and other irrigation projects undertaken by the government to increase agricultural production.

Because the respondents did not provide an adequate response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

H. Preferential Provision of Technical Support

Petitioners allege that pistachio growers in Iran may receive technical support as part of the government's program to support agricultural development. Petitioners argue that technical support has included research projects to improve cultivation techniques, and assistance in harvesting, and marketing produce as well as the use of fertilizer. Because the respondents did not provide an adequate response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we are applying, as best information available, the highest benefit rate for a domestic bounty or grant program found in this case. On this basis, we determine an estimated net bounty or grant of 7.11 percent *ad valorem*.

Petitioners' Comments

Comment 1: Petitioners argue that the response filed by respondents should be disregarded in its entirety by the Department. Important issues raised in the questionnaire have gone unaddressed, and requested background explanations and documentation have not been provided. The response is non-responsive and therefore, the final determination should be based upon the best information available.

DOC Position: We agree. See the "Case History" and "Analysis of Programs" sections of this notice.

Comment 2: Petitioners urge the Department to use the best information available to quantify the benefit conferred by the nine billion rial loan extended to the Rafsanjan Pistachio Cooperative based on the assumption that the loan was provided cost-free. Petitioners argue that the Department has sufficient information from the peitition and a subsequent submission by petitioners to calculate the benefit from this loan.

DOC Position: We agree. See our determination on this loan in section I.C., above.

Comment 3: Petitioners contend that the section of the January 27, 1986 response regarding the Iranian financial system and interest rate structure is misleading and that borrowers in Iran may incur certain costs which are comparable to interest expenses. According to petitioners an "Islamic" banking system, which prohibits interest charges, has been in place only since March 1984. Prior to this time, which is in the period of investigation, Iranian banks operated according to standard banking practices.

DOC Position: We agree that the response inadequately explained the operation of the Iranian financial system and lending practices. As explained in our determination, however, we are assuming the loan to the Rafsanjan Pistachio Cooperative ws received in 1983 and we are using a benchmark interest rate based on a period when,

according to information submitted by petitioners, Iranian banks charged interest according to standard banking practice. See section I.C. of this notice.

Comment 4: Petitioners allege that a currency retention program exists in Iran and that it confers a countervailable benefit on exports. Exporters are permitted to retain foreign exchange earned from export sales or to import goods independent of the government's control. Petitioners argue that these privileges are limited to exporters and thus confer a bounty or grant.

DOC Position: Because we did not receive an adequate response in this investigation, we used the information provided in the petition to analyze this program. See section I.B. of this notice for our determination.

Comment 5: Petitioners contend that there is a preferential exchange rate program for pistachio exports. The Central Bank of Iran Annual Report, filed with the response, confirms its existence.

DOC Position: Because we did not receive an adequate response in this investigation, we used the information included with the petition to analyze this program. See section I.A. of this notice for our determination.

Comment 6: Petitioners contend that based upon the information contained in the Central Bank of Iran Annual Report, it is clear that the government of Iran provides massive assistance to the agricultural sector. Thus, many of the domestic programs alleged to be bounties or grants in the petition are provided by the government of Iran.

DOC Position: We agree that the Central Bank report provides evidence of the existence of these programs but it provides no evidence on which to base a decision of whether these programs are countervailable. Therefore, as best information available, we have adversely inferred countervailability and applied the highest rate found for a domestic bounty or grant. See our determination on these domestic subsidy programs in section I.D—H. above.

Comments by Interested Party

Comment 1: Interested party asserts that there is no preferential rate of exchange in Iran. Sufficient information has not been provided to support the existence of this export subsidy. The reference to this program in the Central Bank of Iran Annual Report is general and refers to the purchase of non-oil export proceeds at unspecified "preferential" rates.

DOC Position: It is the obligation of respondents in an investigation to provide complete documentation and explanations regarding bounty or grant allegations. Because the information submitted on January 27, 1986 was incomplete and inadequate, we have determined that we must use best information available as the basis for our analysis of all the alleged bounty or grant programs.

Comment 2: Interested party denies the existence of a foreign currency retention scheme in Iran for exporters. Iranian exporters may return foreign exchange only at the official rate or return imported goods for sale at locations and on terms designated by the Production and Distribution Center (PDC).

DOC Position: See our response to comment 1, above.

Comment 3: Interested party argues that should the Department agree with petitioners that a preferential exchange rate and/or foreign currency retention scheme exists, the benefit calculated would have to be limited to the level of "legitimate" pistachio exports to the U.S. quoted in the response. No benefits could accrue to illegal exports or imports conducted without the knowledge of the government of Iran.

DOC Position: Because the response was inadequate, we did not verify the information submitted by the respondents and are relying on best information available. In addition, there is no information to suggest that simply because certain exports to the United States were not recorded by the government of Iran, that these exports would somehow not benefit from bounties or grants provided to pistachio producers.

Comment 4: Interested parties claims petitioners have failed to establish that any domestic subsidies are available to, or are received by, growers of pistachios or pistachio cooperatives in Iran. The status of pistachios as a luxury item makes it ineligible to receive the alleged preferential benefits available only to basic food commodities.

DOC Position: See our response to interested party comment 1, above.

Comment 5: Interested party contends that all agriculture in Iran is exempt from payment of land taxes. Therefore, any benefit to pistachio farmers is non-countervailable.

DOC Position: See our response to interested party comment 1, above.

Comment 6: Interested party claims the Rafsanjan Pistachio Producers Cooperative did not receive countervailable benefits via a nine-billion rial government loan. There is no government program to provide capital to certain companies or segments of the agricultural sector.

DOC Position: See our response to interested party comment 1, above.

Best Information Available

In accordance with 776(d) of the Act, we used the best information available in making our final determination.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with section 355.34 of our regulations (19 CFR 355.34). Written comments were received from counsel for the petitioners on January 28 and February 4, 1986. Written comments were also filed on behalf of the Pistachio Group of the Association of Food Industries, an interested party to the proceedings, on February 5, 1986. We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with section 355.35 of our regulations (19 CFR 355.35). No hearing was requested.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determination shall remain in effect until further notice (50 F.R. 53178). The estimated net bounty or grant for duty deposit purposes is 99.52 percent *ad valorem*. In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require cash deposit in the amount indicated above for each entry of in-shell pistachios from Iran which is entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(a) of the Act [19 U.S.C. 1617(d)].

Paul Freedenberg,

Assistant Secretary for Trade Administration.

March 5, 1986.

[FR Doc. 86–5248 Filed 3–10–86; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–004]

Toy Balloons (Including Punchballs) and Playballs From Mexico; Preliminary Results of Administrative Review of Countervailing Duty Orders

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty orders.

SUMMARY: In response to a request from the exporter in each case, the Department of Commerce has conducted an administrative review of the countervailing duty orders on toy balloons (including punchballs) and playballs from Mexico. The review covers the period April 1, 1983 through December 31, 1983 and seven programs.

As a result of the review, the Department has preliminarily determined the bounty or grant to be 4.54 percent *ad valorem* for toy balloons (including punchballs) and 3.45 percent *ad valorem* for playballs for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Marselian or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 45039) the final results of its last administrative review of the countervailing duty orders on toy balloons (including punchballs) and playballs from Mexico (47 FR 57532, December 27, 1982). In accordance with § 355.10 of the Commerce Regulations, the exporter in each case requested on October 15, 1985, an administrative review of the orders. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Mexican boy balloons (including punchballs) and playballs. Such merchandise is currently classifiable under items 735.0990 and 737.9536 of the *Tariff Schedules of the United States Annotated.*

The review covers the period April 1, 1983 through December 31, 1983 and seven programs: (1) FOMEX; (2) CEPROFI; (3) CEDI; (4) FONEI; (5) FOGAIN; (6) import duty reductions and exemptions; and (7) state tax incentives.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust fund of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program since August 1, 1983. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export (production) financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since those loans are given only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for FOMEX pre-export financing, denominated in Mexican pesos, was 8 percent during the period of review. The annual interest rate for FOMEX export financing, denominated in the currency of the importing country, was 6 percent during the period of review.

Since we lacked information on effective FOMEX interest rates in this case, we chose nominal peso and dollar rates as our benchmarks. For peso-denominated loans, we used as a benchmark for the commercial interest rate in Mexico the average of the nominal interest rates published monthly by the Banco de Mexico in the *Indicadores Economicos.* For dollar-denominated loans, we used interest information obtained from the U.S. Federal Reserve Board.

Based on this information, we preliminarily determine that, during the period of review, comparable peso-denominated loans were available commercially at 64.34 percent and comparable dollar-denominated loans were available at 12.60 percent. We found the resulting interest differentials during the review period to be 56.34 percent for peso-denominated loans and 6.60 percent for dollar-denominated loans.

The one known exporter of toy balloons (including punchballs) to the United States used these programs during the period of review, as did the one known exporter of playballs to the United States. Since neither firm could tie its FOMEX pre-export loans to exports to specific countries, we used all of each firm's FOMEX pre-export loans and allocated the benefits over each firm's total exports. Since both firms were able to tie FOMEX export loans to exports to specific countries, we used only FOMEX export loans on U.S. shipments and allocated the benefits over only the value of U.S. shipments during the period of review.

On this basis, we preliminarily determine the benefit for toy balloons (including punchballs) from FOMEX pre-export loans to be 2.88 percent, and from FOMEX export loans to be 1.66 percent, for a total benefit of 4.54 percent *ad valorem.* In the case of Mexican playballs, we preliminarily determine the benefit from FOMEX pre-export loans to be 2.36 percent, and from FOMEX export loans to be 1.09 percent, for a total benefit of 3.45 percent *ad valorem.*

On September 2, 1985, the Mexican government raised the interest rate on FOMEX pre-export financing to 39.6 percent and on FOMEX export financing to 6.6 percent. The calculate the estimated duty cash deposit rate, we compared the new FOMEX interest to our most recent commericial benchmarks. The interest differential for peso-denominated loans is 26.17 percent, and for dollar-denominated loans, 6.28 percent. On this basis, we preliminarly find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 2.92 percent *ad valorem* for toy balloons (including punchballs) and 1.98 percent *ad valorem* for playballs.

(2) Other Programs

We also examined the following programs and preliminarily find that exporters of toy balloons (including punchballs) and playballs did not use them during the review period.

(A) Certificates of Fiscal Promotion ("CEPROFI");

(B) Tax Rebate Certificates ("CEDI");

(C) Fund for Industrial Development ("FONEI");

(D) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");

(E) Import duty reductions and exemptions; and

(F) State tax incentives.

Preliminary Results of Review

As a result of our review, we preliminarily determine the bounty or grant to be 4.54 percent *ad valorem* for playballs.

The Department intends to instruct the Customs Service to assess countervailing duties of 4.54 percent of the f.o.b. invoice price on shipments of toy balloons (including punchballs), and 3.45 percent of the f.o.b. invoice price on shipments of playballs exported on or after April 1, 1983, and exported on or before December 31, 1983.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.92 percent of the entered value on all shipments to toy balloons (including punchballs) and 1.98 percent of the entered value on all shipments of playballs entered, or withdrawn from warehouse, for consumption on or after the date of

publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final result of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days after the date of publication or the first workday before. Any request for an administrative protective order must be made no later than five days after date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: March 4, 1986.

John L. Evans,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-5219 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-DS-M

Transportation and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Test Equipment Technical Advisory Committee will be held April 2, 1986, 9:30 a.m., Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Progress on the TAC 1986 plan.
4. New business.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5 (c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes call 202-377-2583.

Dated: March 6, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-5247 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service, Marine Mammals, Fish Import Certification From Chile

Regulations established in accordance with the Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.* (50 CFR 216.24(e)) provide that a nation may certify that vessels fishing under its flag are (1) fishing in conformance with U.S. regulations, or (2) if not in conformance, were not fishing in a manner prohibited for U.S. fishermen under these regulations. This certification is necessary in order to permit the importation into the United States of certain of its fish and fish products.

The Assistant Administrator for Fisheries, National Marine Fisheries Service, has received and accepted a certification from the Government of Chile that vessels fishing for salmon under Chilean flag are fishing in conformance with U.S. regulations in regard to the taking of marine mammals incidental to commercial fishing operations. Therefore, salmon from Chile are hereby exempt from the provisions of 50 CFR 216.24(e)(3) and may be exported to the United States without an accompanying Standard Form 369-1 (Fisheries Certificate of Origin).

Copies of the certification are on file and available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC.

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-5273 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-22-M

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of experimental fishing permit applications and request for comments.

SUMMARY: This notice acknowledges receipt of nine applications for experimental fishing permits (EFPs) to harvest sablefish and other groundfish with set nets in the Pacific Ocean north of 38° N. latitude in 1986. These applications were submitted in response to a notice announcing that applications would be accepted until January 30, 1986. If granted, these permits would allow fishing which otherwise would be prohibited by Federal regulations.

DATE: Comments on these EFP applications must be received by March 14, 1986.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at § 663.10 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations.

Section 663.26(c) prohibits fishing for groundfish using set nets (anchored gillnets) north of 38° N. latitude because the Pacific Fishery Management Council (Council) when developing the FMP was

concerned about (1) the potential for an unacceptably high incidential catch of salmon, (2) the lack of information on the potential incidental catch of other species such as halibut and protected groundfish species, (3) the ability of set nets to continue fishing indefinitely if lost or unattended, (4) the introduction of a new fishery when the stocks were already fully utilized by existing gear, and (5) the potential for conflict between fixed and mobile gear if used in the same area. This restriction on set nets is consistent with historic State groundfish regulations and on international understanding with Canada on ocean net fisheries.

Subsequent to implementation of the FMP, NMFS issued EFPs each year to obtain data on set nets and their use in harvesting sablefish and other incidentally taken groundfish species, and to determine whether such fishing gear can be incorporated into the FMP without undue negative impact on the resource or on other fishermen. One EFP was issued in 1982, three in 1983 and in 1984, and seventeen in 1985. NMFS observers accompanied the EFP vessels on over 30 percent of their trips to monitor the experiment and collect information. Most of this experimental fishing with set nets occurred in a small area in the deeper waters off the cost of northern Washington. Sablefish was the target species, although quantitites of lingcod and rockfish were also landed. Approximately 361, 572, and 704 metric tons of sablefish, lingcod, and rockfish were landed by EFP vessels in 1983, 1984, and 1985, respectively. Sablefish comprised 49 percent, 66 percent, and 40 percent of the landed catch in these three years. The incidental catch of salmon was negligible, as only five salmon were taken in over 500 sets observed during the three years. Further details are included in the annual reports on the experimental fishery which are available from the above address.

A notice in the **Federal Register** (50 FR 51279, December 16, 1985) announced that NMFS is considering issuing similar EFPs again in 1986 and would accept applications until January 30, 1986. The notice provided instructions to apply for an EFP and advised potential applicants that possibly no EFPs would be issued for 1986.

Nine applications were received by January 30, 1986. All but one of the applicants are previous participants in this experimental fishery and they all propose to fish experimentally with essentially the same gear and in the same manner as they did under the EFPs issued in 1985. All applicants chose the area off the coast of Washington, north of 47°30′ N. latitude, as their first choice. The target species are sablefish, lingcod, and rockfish. All applicants indicated they wanted to fish experimentally about the same time as last year, May 1 to October 31, using a maximum of 1600 fathoms of net with 5½- to 6-inch mesh size.

Advice on whether to approve or deny all or some of the applications will be sought from the Council at its March 10–13, 1986, meeting in Portland, Oregon. Considerations toward a decision will include a review of the information collected to date on use of this gear, recommendations of the Council, and comments received from the public. Since considerable information has been collected on the use of this gear, it may be adequate for evaluating this fishery and no further EFPs will be issued or, if issued, they may be restricted to the times and areas where further information is needed. The number of EFPs issued may be limited by the funds available to pay for observers to collect experimental data and monitor permit compliance. It is possible that no EFPs will be granted in 1986 because of resource and allocation concerns.

After a decision is made on how many, if any, EFPs will be issued in 1986, applicants will be selected, based on the proposals best suited to achieve the purpose of the EFP with regard to obtaining needed information. The evaluation will consider the applicants' experience and ability to comply with the conditions of the experiment which will be specified in their permits. Willingness to fish in any or all areas may improve an applicant's chance of being selected. If objective evaluation does not sufficiently limit the number to be selected, a random drawing may be used. If applicants do not voluntarily achieve an acceptable area distribution, area assignments may be imposed as conditions of the permits.

Copies of the applications are available for review at the address above.

(16 U.S.C. 1801 *et seq.*)

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries, Resource Management, National Marine Fisheries Service.

[FR Doc. 86-5272 Filed 3-10-86; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235

or send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901, 301/674–2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753–4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, 2000 S.W. First Avenue, Portland, OR 97201 503/221–6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 907/274–4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202–634–7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1986 have been received from the Governments shown below.

Dated: March 6, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) in support of U.S. vessels Joint Venture)

Nation, vessel name, and type	Application No.	Fishery	Activity
Government of Italy			
Giovanni C., medium stern trawler.	IT-86-0022.	NWA	1*
Government of Japan			
Reefer Beaver, cargo/transport vessel.	JA-86-1145.	BSA, GOA	3
Government of the Republic of Korea			
No. 1 Chil Bo San, cargo/transport vessel.	KS-86-0133.	BSA, GOA	3
Government of the Union of the Soviet Socialist Republics			
Kamenka, medium stern trawler.	UR-86-0791.	BSA, GOA	1*
Sekuschil, medium stern trawler.	UR-86-0792.	BSA, GOA	1*

Joint Venture

Italy

The Italian vessel, GIOVANNI C., will participate in a joint venture with the IST Corporation, Cape May, NJ. Notice of receipt of that permit application for the joint venture was published December 6, 1986, 50 FR 50150.

Poland

The Government of Poland has submitted applications for joint venture activities in the WOC fisheries for 30,000 mt of Pacific whiting. Contract negotiations have not been concluded; therefore, an American partner was not designated on the application.

USSR

The USSR vessels listed will participate in the joint venture with Marine Resources Company, International (MRA), Seattle, WA. Notice was published December 2, 1985, 50 FR 49437.

[FR Doc. 86-5274 Filed 3-10-86 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

National Council on Vocational Education; Public Meeting

AGENCY: National Council on Vocational Education.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming Executive Committee Meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: March 24, 1986.

ADDRESS: Fashion Institute of Technology, 227 West 27th Street, A Building, Room 802, New York, New York.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Records are kept of the Council's proceedings, and are available for public inspection at the office of the National Council on Vocational Education from 9:00 AM to 5:00 PM, 2000 L Street, NW., Suite 580, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Edwards, NCVE Staff at above address. Telephone (202) 634-6110.

Signed at Washington, DC, on March 3, 1986.

Dated: March 3, 1986.

Carolyn J. Edwards,

Executive Assistant.

[FR Doc. 86-5214 Filed 3-10-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Nonresidential Buildings Energy Consumption Survey (NBECS) Forms

AGENCY: Energy Information Administration, DOE.

ACTION: Solicitation of comments on the 1986 NBECS survey forms.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) is seeking comments on the proposed survey forms for the 1986 Nonresidential Buildings Energy Consumption Survey (NBECS). The NBECS is a general purpose statistical survey conducted for non-regulatory purposes. It is being designed to meet the needs of public and private data users in addition to meeting the legislative requirements of EIA as specified in section 52 of the Federal Energy Administration Act of 1974, Pub. L. 93-275. Section 52 requires the EIA to establish a National Energy Information System which ". . . shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate. . . ."

The NBECS, which has been previously conducted in 1979 and 1983, is designed to provide limited basic information on energy consumption for benchmarking, forecasting, policy evaluation and planning.

In both the 1979 and the 1983 NBECS, representative samples of nonresidential buildings in the 48 contiguous States and the District of Columbia were selected. Data were collected at the individual building level on characteristics of the building's structure, activities inside the building, energy conservation measures, heating and air-conditioning equipment, and both the types and the end uses of energy consumed. Information concerning the building unit was collected by personal interviews with the building owner/manager in the 1979 NBECS and through telephone interviews in the 1983 NBECS. These interviews, conducted by trained professional interviewers, were voluntary. For the 1979 and 1983 surveys, data concerning actual energy consumption were obtained from fuel records maintained by each building's energy suppliers by means of a mandatory mail survey.

The EIA has built a new area probability sampling frame for the 1986 and subsequent surveys. The design of the 1986 NBECS is expected to yield national estimates based on 5,500 completed interviews. Present plans call for data to be collected that will be valid for the four Census regions (Northeast, South, North Central, and West). The 1986 NBECS building characteristics data will be gathered in the first quarter of 1987 through voluntary personal interviews with the owners/managers of commercial buildings. At the conclusion of the interview, the building owner/manager will be asked to sign a waiver authorizing the survey contractor to obtain fuel consumption records from the building's energy suppliers. Data on energy consumption and expenditures will be collected through a series of mandatory mail surveys to the energy suppliers for each of the sampled buildings.

ADDRESS: To obtain additional information or copies of the proposed forms, contact: Ms. Julia Oliver, Energy End Use Division, Energy Information Administration, Department of Energy, Mail Stop 1H–053, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202–252–5744).

DATE: Written responses on the proposed forms should be submitted to Dr. Lynda T. Carlson, Director, Energy End Use Division at the above address within 30 days of the publication of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

The EIA solicited comments on the design of the 1986 NBECS through a **Federal Register** notice on January 31, 1985 (50 FR 4571). The proposed questionnaires have been developed using the knowledge gained by EIA through the public comments received in response to that notice, through discussions with NBECS data users and through discussions with industry representatives and trade associations.

II. Current Actions

In keeping with its mandated responsibility, EIA proposes to make changes, as described below, to the NBECS forms for the 1986 survey. Implementation of these changes, which will result in a net reduction of the reporting burden imposed on the public, will not impede EIA's ability to ensure that the potential needs of NBECS data users are met.

The proposed 1986 NBECS Building Interview form is a melding of the previous forms used on the 1979 and 1983 surveys. The major categories of data collected remain the same: building characteristic, heating and cooling equipment, fuels used and, conservations practices. However, within these categories, questions have been combined, reworded, reformatted, and in some cases droped altogether.

Major questions that have been dropped on the 1986 NBECS include: the Emergency Building Temperature Restrictions questions (1979 NBECS), detailed boiler characteristics questions (1983 NBECS), detailed insulation questions (1983 NBECS). Questions that have undergone major reformatting or rewording include the questions on heating and cooling, building activities, and conservations measures. Questions have been added on cogeneration, lighting, roof and wall construction materials, fuel switching, and measures of size for selected building uses. Two questions may also be added to the questionnaire for the Census Bureau—these would relate to expnditures for construction improvements and maintenance and repairs.

The Energy Supplier Forms for the 1986 NBECS are essentially the same as those used on previous surveys. Questions on data items which were not found useful have been deleted. As a result of our experiences in previous surveys, instructions have been clarified and some questions have been added to help clarify data responses. For example, an optional schedule has been added to the Energy Supplier Form (electricity) to help those electric utilities who maintain disaggregated records for a single building.

III. Written Comments

The following general guidelines are provided to assist in the preparation of comments. When providing comments, please indicate to which form the comment applies: (1) The personal interview with building owner/manager (Building Interview) or (2) the mail survey of the energy suppliers (Energy Supplier Forms).

As a potential data user:

A. Can you use data at the levels of detail indicated on the forms?

B. For what purpose would you use these data? Please be specific.

C. How could the forms be improved to better meet your specific data needs?

D. Are there alternative source of these data? What are they? Do you use them? What are their deficiencies?

As a potential respondent:

A. Are the instructions clear and sufficient?

B. How can the forms be improved?

C. Can the data be submitted using the definitions included in the instructions?

D. What is the estimated cost of completing the forms, including the direct and indirect costs associated with the data collection? Direct costs should include all costs directly attributable to providing the information (such as administrative costs).

E. Do you know of other Federal, State, or local agencies that collect similar data? If so, specify the agency and the means of collection.

In addition to receiving comments to the general questions listed above, the EIA would like to receive comments from electric utilities and steam suppliers on several specific questions that have been added to the Energy Supplier Forms.

1. *Energy Supplier Forms: Electricity Usage—Schedule A.* A number of users of the NBECs data would like to relate the NBECs building data to Standard Industrial Classification (SIC) codes. Discussions with industry representatives have led EIA to believe that some electric utilities assign SIC codes to commercial buildings. Does your electric assign SIC codes to commercial buildings? Is the information readily available from your records?

2. *Energy Supplier Forms: Electricity Usage—Disaggregated by end Use.* On previous surveys, the EIA discovered that some utilities meter customers separately for different end uses: for example, they have one meter for hearing and air-conditioning and a separate meter for lighting and other end

uses. To alleviate the burden of having the respondent aggregate the consumption data, the EIA has developed a separate form for use by utilities that have separate end-use meters in buildings. Does your utility disaggregate electricity data by end use? What changes would you suggest to this form?

3. *Energy Supplier Forms: Individual Steam.* In order to correct inconsistencies observed in the data collected on buildings using steam, the EIA has added two questions. The first question determines if the building is a Powerplant while the second is designed to determine if the building is billed for steam piped into it. Is this information available from existing records without creating additional respondent burden?

The EIA is also interested in receiving comments from other persons regarding their views on the need for this information.

Comments or summaries of comments submitted in response to this notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, DC, on March, 6, 1986.

L.A. Pettis,

Acting Deputy Administrator, Energy Information Administration.

[FR Doc. 86-5233 Filed 3-10-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-404-000 et al.]

Electric Rate and Corporate Regulation Filings; Commonwealth Edison Co. et al.

March 5, 1986.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER85-404-000]

Take notice that on February 28, 1986, Commonwealth Edison Company filed a compliance report pursuant to the Commission's February 5, 1986 letter order in the above referenced proceeding. In compliance with the Commission's order, Edison submitted copies of the following:

(1) Summary tabulations, showing revenues under prior filed and settlement rates; the revenue refunds; and the related interests;

(2) Tabulations for each wholesale customer showing the monthly billing determinants; revenue receipt dates; revenues under prior, filed and settlement rates; the monthly revenue refund; and the monthly interest;

(3) A copy of the December 20, 1985 "Updated List of Interest Rates to be Applied to Commission-Ordered Refunds";

(4) Photocopies of the transmittal letters and refund checks sent to the two Cities on February 14, 1984; and

(5) A notarized statement that the enclosed tabulations are accurate.

Comment date: March 19, 1986, in accordance with Standard Paragraph H at the end of this notice.

2. Central Illinois Public Service Company

[Docket No. ER86-327-000]

Take notice that on February 28, 1986, Central Illinois Public Service Company ("CIPS") tendered for filing a Power Supply Agreement, a Transmission Services Agreement and an Interim Agreement, each dated February 11, 1986, between CIPS, Soyland Power Cooperative, Inc. ("Soyland") and Western Illinois Power Cooperative, Inc. ("WIPCO"). The three interdependent agreements restructure the operational relationship between CIPS and the two cooperative customers.

Copies of the filing have been served on Soyland, WIPCO and the Illinois Commerce Commission. Copies of the transmittal letter have been served on CIPS' other wholesale customers.

Comment date: March 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. The Cincinnati Gas & Electric Company

[Docket No. ER86-305-000]

Take notice that The Cincinnati Gas & Electric Company (Cincinnati) tendered for filing on on February 26, 1986, new Service Agreements, between Cincinnati and the Village of Bethel (Bethel) dated January 10, 1986; between Cincinnati and the Village of Blanchester (Blanchester) dated January 27, 1986; between Cincinnati and the Village of Georgetown (Georgetown) dated January 22, 1986; between Cincinnati and the Village of Hamersville (Hamersville) dated January 20, 1986; and, between Cincinnati and the Village of Ripley (Ripley) dated January 22, 1986.

The new Service Agreements become effective April 1, 1986 and supersede existing Agreements with Bethel, Blanchester, Georgetown, Hamersville, and Ripley.

Cincinnati states that the Agreements are in the form as specified in the "Form of Service Agreements" included in and on file with the Commission as Original Sheet No. 11 of First Revised Volume No. 1. No rate change of any kind is contemplated by the Service Agreements until changed by an appropriate filing made in accordance with section 205(d) of the Federal Power Act.

A copy of the filing was served upon Bethel, Blanchester, Georgetown, Hamersville, and Ripley.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER85-130-004]

Take notice that on February 7, 1986, Illinois Power Company tendered for filing a Report of distribution of Refunds for all amounts plus interest collected from Soyland Power Cooperative, Inc. ("Soyland") an Western Illinois Power Cooperative, Inc. ("WIPCO") pursuant to paragraph five (5) of the Commission's letter order dated December 24, 1985 approving the Power Coordination Agreement between the parties.

The rate increase amounts being refunded to Soyland/WIPCO are those amounts collected in excess of the settlement rates for electricity consumed during the period from January 1, 1985 through October 31, 1985.

Interest has been applied to the amounts refunded in accordance with the Commission's Order Nos. 47 and 47-A and Section 35.19a of the Commission's Regulations. These refunds were made to Soyland/WIPCO on January 23, 1986.

Comment date: March 17, 1986, in accordance with Standard Paragraph H at the end of this notice.

5. Illinois Power Company

[Docket No. ER86-281-000]

Take notice that on February 27, 1986, Illinois Power Company tendered for filing a Facility Use Agreement and Appendix A to a Facility Use Agreement dated January, 1986 between Illinois Power Company ("Illinois Power") and Illinois Valley Electric Cooperative, Inc. ("Illinois Valley")

Illinois Power states that the purpose of the filing is to seek approval of a Facility Use Agreement between Illinois Power and Illinois Valley, and Appendix A thereto, covering a charge for the use of a 12 kv three phase electric service extension to serve customers of Illinois Valley in the Princeton, Illinois, area.

According to Illinois Power, copies of this filing have been mailed to Illinois Valley and the Illinois Commerce Commission, Springfield, Illinois.

Illinois Power requests an effective date of July 19, 1985 and therefore requests waiver of the Commission's notice requirements.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this document.

6. Pacific Gas and Electric Company

[Docket No. ER86-328-000]

Take notice that on March 3, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing changes to the rate schedules under the "Interconnection Agreement Between Pacific Gas and Electric Company and the City of Santa Clara" (Santa Clara Agreement) and the "Interconnection Agreement Between Pacific Gas and Electric Company and the Northern California Power Agency, City of Biggs, City of Gridey, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah and Plumas Sierra Rural Electric Cooperative" (NCPA Interconnection Agreement) or (Interconnection Agreements).

The Santa Clara Agreement was filed initially under Docket No. ER 84-6-000 and was assigned FERC Rate Schedule No. 85. The NCPA Agreement was filed initially under Docket No. ER 83-683-000 and was assigned FERC Rate Schedule No. 84. The Interconnection Agreements provide for firm transmission service between points of Receipt and Points of Delivery. Under the provisions of existing letter agreements between PGandE and the Northern California Power Agency (NCPA) and between PGandE and the City of Santa Clara, certain points of Receipt and Delivery contained in NCPA's and Santa Clara's Exhibits A-4 will expire on May 1, 1986. Pursuant to these letter agreements, PGandE requests that the revised Exhibits A-4 contained in this filing become effective on May 2, 1986. No part of these letter agreements involves a change in the level of any rate, nor do the letter agreements amend the Interconnection Agreements.

Comment date: March 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp.

[Docket No. ER86-325-000]

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on February 27, 1986, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Oregon (Bonneville's Docket No. 5-A1-8502). The Revised Appendix 1 calculates the ASC for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective July 1, 1985, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commissioner of Oregon, and Bonneville's Direct Service Industrial Customers.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No. ER86-324-000]

Take notice that Portland General Electric Company (PGE) on February 27, 1986, tendered for filing a Second Revised Page 1 and a Second Revised Page 2 of its FERC Electric Service Tariff, Volume No. 1. PGE also tendered for filing on the same date a new service agreement with Sacramento Municipal Utility District.

PGE's letter of transmittal states that when the above tariff was originally accepted for filing, the Commission required a report of monthly sales under such tariff to be filed with the Commission. PGE states it is making the present filing and proposing the changes shown on second revised pages 1 and 2 to eliminate the monthly filing of sales requirement. In support of the filing, PGE has tendered certain cost data. PGE proposes elimination of the monthly reporting requirement upon acceptance of the filing by the Commission.

Portland General Electric Company requests an effective date of January 1, 1986, and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing were served upon parties having service agreements with Portland General Electric Company, parties to the Intercompany Pool Agreement (revised), Intervenors in Docket ER 77-131 and the Oregon Public Utility Commissioner.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Hampshire

[Docket No. ER86-312-000]

Please take notice that on February 21, 1986 Public Service Company of New Hampshire (PSNH) filed rate schedule supplements and revision revising PSNH's fuel adjustment clause to include a provision allowing PSNH to recover the total cost of economic purchases through the fuel adjustment clause. These revisions are made pursuant to Commission Order No. 352, issued December 7, 1983 in Docket No. RM 83-62-000, which modified 18 CFR 35.14 to provide for such recovery.

The filing consists of supplements and revisions to the following rate schedules:

Customer	Rate schedule
Concord Electric Company.	FERC No. 24.
Town of Ashland, New Hamshire Electric Light Department.	FERC No. 28.
New Hampton Village Precinct.	FERC No. 29.
Exeter & Hampton Electric Company.	FERC No. 35.
New Hampshire Electric Cooperative, Inc..	FERC Nos. 50 and 71.
Town of Wolfeboro, New Hampshire.	FERC No. 72.
Citizens Utilities Company.	FERC No. 110.

The language in the "Fuel Adjustment" sections of the rate schedules listed above has been revised in the present filing to allow PSNH to recover the cost of any purchase of less than twelve months duration where the total cost of the purchase is less than PSNH's total avoided variable cost, and which is made solely to displace higher cost generation.

PSNH is making this filing in order to bring its wholesale fuel clause in line with its retail mechanism and with the current FERC regulations. PSNH requests waiver of the sixty day notice requirement in order to place this filing in effect on March 1, 1986. In the alternative, PSNH requests that this filing become effective on April 22, 1986, sixty days after the filing date.

PSNH has served each affected wholesale customer and pertinent State commissions with copies of its filing.

Comments date: March 18, 1986, in accordance with Standard Paragraph E at the end of this document.

10. UtiliCorp United Inc., d/b/a Missouri Public Service

[Docket No. ER86-323-000]

Take notice that UtiliCorp United Inc. d/b/a Missouri Public Service, on February 26, 1986, tendered for filing a proposed change in its FERC Electric Service Tariffs for wholesale firm power service to supersede and replace the contract rate schedule presently in effect and on file with the Commission which relates to the City of El Dorado Springs

located in the State of Missouri. The proposed contract would supersede and replace FERC Rate Schedule Number 41. The proposed contract reflects changes in delivery voltage, substation capacity and extends the expiration date of the contract. The new contract does not change anticipated annual revenues.

The proposed delivery voltage and substation capacity changes are in compliance with a request received from the City of El Dorado Springs. The extension in the term of the contract is to assure a long-term source of power to the City of El Dorado Springs and to justify the additional expenditures required by the Company to provide the revised delivery voltage and increased capacity.

Copies of the filing were served upon the City of El Dorado Springs whose contract would be affected thereby, and upon the Pubic Service Commission of Missouri. The rates and charges would not be affected.

Comment date: March 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5257 Filed 3-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-314-000, et al.]

Natural Gas Certificate Filing; K N Energy, et al.

March 5, 1986.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP86-314-000]

Take notice that on February 10, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-314-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon metering stations and appurtenant facilities for an service to certain direct sales customers, under the authorization issued in Docket No. CP83-140-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to abandon by removal the metering stations and appurtenant facilities which were installed to deliver natural gas for alfalfa dehydration purposes to the following direct sales customers:

Name of customer	Docket number authorizing service
Central Alfalfa, Inc.—Josselyn Plant	G-1180
Continental Grain, Inc.—Elm Creek Plant	G-1180
Western Alfalfa Corp.—Lexington Plant	G-1857

It is stated that the Applicant would only abandon service to Central Alfalfa, Inc., at those measurement facilities related to alfalfa dehydration. It is further stated that service to Central Alfalfa, Inc.'s elevator, grain dryer and other requirements would continue through existing separate measurement facilities.

It is stated that deliveries to the direct sales customers for alfalfa dehydration have ceased and that each customer has notified Applicant that the facilities at the respective delivery points are no longer needed for alfalfa dehydration and that each customer has consented to the abandonment of these facilities by the Applicant.

Comment date: April 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP86-307-000]

Take notice that on February 5, 1986, Northern Natural Gas Company Division of InterNorth, Inc. (Northern Natural), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-307-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon a small meter set by transferral from Peoples Natural Gas Company, a Division of Utilicorp United, Inc. (Peoples), to North Central Public Service Company (North Central) and to use the delivery point to serve natural gas to Oakwood Terrace Sub-Division in Sherburne County, Minnesota (Oakwood Terrace), under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The Commission by order issued September 3, 1980, in Docket No. CP80-382-000, authorized Northern Natural to construct and operate a small meter set to serve natural gas to Peoples for resale to James E. Duemke (Duemke), a right-of-way grantor. It is explained that following construction of the meter set, Duemke declined service and Northern Natural did not place the facility in service. Northern Natural states that North Central determined the delivery point was located within its service area and proposed to use the delivery point to serve Oakwood.

By supplement to the application filed February 19, 1986, in Docket No. CP86-307-000, Northern Natural withdrew its request to abandon the Duemke meter set and instead requested prospective authority to operate such existing meter set for the delivery of natural gas to North Central for ultimate delivery and use of the residents of Oakwood Terrace, a residential subdivision. Northern Natural states further that Northern Natural agreed to assign the delivery point to North Central. Northern Natural asserts that in an effort to provide timely service for the 1985-86 winter heating season for the residential customers of Oakwood Terrace, Northern Natural's field employees, without prior regulatory approval, inadvertently performed a necessary change-out of the existing American 275 meter and replaced it with a Rockwell 415 meter and that the delivery point was then placed in service and deliveries of gas to North Central commenced September 16, 1985.

Northern Natural states that it estimates the deliveries of gas to North Central in the fifth year of operation would be 8.8 Mcf of gas on a peak day with annual deliveries of 920 Mcf of gas. Northern Natural indicates that the end-use of the gas would be for residential

space heating and that the volumes are within North Central's firm entitlement that was authorized by Commission order issued July 29, 1983, in Docket No. CP82–500–001.

Comment date: April 21, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP86–313–000]

Take notice that on February 10, 1986, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86–313–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing increases in sales of natural gas to certain existing small general service (SG) customers of Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that, pursuant to agreements between Applicant and certain of its existing SG customers, Applicant has agreed to increase the contract demand volumes for the following customers by a total of 24,536 Mcf per day, as follows:

Customer	Current (Mcf)	Requested (Mcf)	Increase (Mcf)
Kansas:			
Louisburg, city of	1,000	1,200	200
LaCygne, village of	800	1,600	800
Illinois:			
Auburn, city of	1,999	2,600	601
Bushnell, city of	2,300	3,150	850
Divernon, city of	1,000	2,000	1,000
Morton, village of	8,700	9,999	1,299
Pawnee, village of	1,500	1,900	400
Pleasant Hill, village of	950	1,000	50
Riverton, village of	1,800	1,900	100
Westville, village of	2,700	3,000	300
United Cities Gas Co. (Rurals)	1,600	3,200	1,600
United Cities Gas Co. (Towns)	5,600	9,999	4,399
Indiana:			
Bainbridge, town of	436	500	64
Montezuma, town of	1,500	3,000	1,500
Westfield Gas Corp	800	2,000	1,200
Missouri:			
Bowling Green Gas Co	2,650	3,000	350
Fulton, city of	8,900	9,999	1,099
Hermann, city of	3,100	5,100	2,000
Macon, city of	5,000	7,000	2,000
Monroe City, city of	2,600	3,000	400
Montgomery City, city of	1,800	2,700	900
Paris, city of	1,270	3,500	2,230
Perry, city of	750	1,550	800
Shelbina, city of	1,971	2,365	394
Total	60,726	85,262	24,536

Applicant states that it has sufficient capacity to provide these increased volumes and that the increased sales would have no significant affect on its gas supply.

Applicant additionally requests authorization to increase the delivery pressure from 100 psig to 200 psig for the City of Montgomery City.

Comment date: March 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Sea Robin Pipeline Company

[Docket Nos. CP73–162–006 & CP86–321–000]

Take notice that on February 7, 1986, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77001 filed in Docket Nos. CP73–162–006 and CP86–321–000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon one transportation service for Southern Natural Gas Company (Southern) and to amend the order issued April 5, 1974 in Docket No. CP73–162 so as to authorize an additional delivery point on another transportation service for Southern, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin proposes to abandon the transportation service authorized in Docket No. CP85–412–000, wherein Sea Robin was authorized to transport up to 60,000 Mcf of natural gas per day for Southern from Block 248, East Cameron area, offshore Louisiana, to the terminus of Sea Robin's system in Erath, Louisiana. Sea Robin proposes to replace this transportation service by amending the transportation authorization in Docket No. CP73–162–000, wherein Sea Robin was authorized to transport up to 31,400 Mcf of gas per day for Southern from various offshore delivery points to Erath. Sea Robin proposes to amend the order of April 5, 1974 in CP73–162–000 by adding a delivery point at East Cameron Block 248. It is stated that the reason for the replacement of the one transportation service with another is that Southern's deliverability in the East Cameron area has declined. It is explained that no new facilities would be required to effect this change.

Comment date: March 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP86–331–000]

Take notice that on Febraury 14, 1986, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP86–331–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Courtaulds North America Inc. (Courtaulds) and for permission to abandon such services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that Courtaulds owns a plant near the town of Axis in Mobile County, Alabama, that manufactures rayon staple fiber and that the plant uses up to 7,500 Mcf of gas per day as dryer fuel and boiler fuel. It is explained that Courtaulds has informed United that instead of relying on coal, Courtaulds secured a supply of natural gas by exploring for and developing its own reserves in Oklahoma at a cost of about $2.5 million. Courtaulds has advised that failure to utilize this supply of gas at the plant would result in an estimated annual cost of more than $3 million and that it is vital to its ability to compete in today's textile market that these costs be reduced.

United states that it has entered into a transportation agreement with Courtaulds dated February 11, 1986, pursuant to which United would transport on an interruptible basis up to 6,000 Mcf of gas per day from the existing interconnection between United and Arkla Energy Resources near Bistineau Bienville Parish, Louisiana, to the existing interconnection between United and Courtaulds' plant at meter No. 35–11–050 in Mobile County, Alabama.

United further states that it would charge Courtaulds an initial rate of 43.25 cents per Mcf, which is inclusive of United's fuel and company-used gas allowance and is equal to United's applicable mileage-based rate as shown on Sheet No. 4–E, Volume No. 1 of United's FERC Tariff. Transportation would continue for a primary term ending February 7, 1989, and would continue thereafter on a year-to-year basis. No facilities need to be installed.

Comment date: March 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5258 Filed 3-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-334-000, et al.]

Natural Gas Certificate Filings; Transylvania Gas Pipeline Co., Inc.

March 4, 1986.

Take notice that the following filings have been made with the Commission:

1. Transylvania Gas Pipeline Company, Inc.

[Docket No. CP86-334-000]

Take notice that on February 14, 1986, Transylvania Gas Pipeline Company, (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-334-000 an application pursuant to section 7(c) of the Natural Gas Act and §284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000. Applicant states that it accepts and would comply with the conditions in paragraph (c) of §284.221 of the Commission's Regulation. Applicant further states that it has filed its proposed transportation rates pursuant to Rate Schedules F and I of its Original Volume No. 1 of its FERC Gas Tariff, in Docket No. CP86-333-000.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-327-000]

Take notice that on February 14, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-327-000, an application pursuant to section 7(b) of the Natural Gas Act, for permission to abandon and remove one 708 horsepower rental compressor unit located in Winkler County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that due to declining gas production, one 708 horsepower rental compressor unit is no longer needed at the Winkler County No. 1 gathering station. The remaining two compressor units have the capability to compress existing production, with additional horsepower remaining for any potential increased future ultilization or as back-up compression.

Northern further states that it proposes to return said compressor to the leasing agent.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Louisiana Intrastate Gas Corporation

[Docket No. CP85-923-000]

Take notice that on September 12, 1985, Lousiana Intrastate Gas Corporation (LIG), P.O. Box 90908, Lafayette, Louisiana 70509, an intrastate pipeline, filed in Docket No. CP85-923-000 an application pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 and § 284.127 of the regulations under the Natural Gas Act (18 CFR 284.127) for authority to transport natural gas on behalf of Freeport Interstate Pipeline Company (Freeport Interstate) until April 30, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

LIG states that it has entered into a transportation agreement dated August 1, 1985, with Freeport Interstate whereby LIG would transport up to 300 million Btu's of natural gas per day for Freeport Interstate. It is further stated that Freeport Interstate would cause the natural gas to be delivered to LIG at a point of delivery located in St. Mary Parish, Louisiana. LIG indicates that it would transport and redeliver the natural gas to an interconnection point on its system with the facilities of another intrastate pipeline, Freeport Pipeline Company (Freeport Pipeline), in Jefferson Parish, Louisiana. It is stated that Freeport Pipeline has agreed to transport the natural gas on Freeport Interstate's behalf from the LIG-Freeport Pipeline interconnection point in Jefferson Parish to a point of interconnection with the facilities of Freeport Interstate in Jefferson Parish, Louisiana.

LIG states that it proposes to charge Freeport Interstate a fee of 29.8 cents per million Btu redelivered at the point of redelivery with Freeport Pipeline in Jefferson Parish, Louisiana.

Comment date: March 25, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Consolidated Gas Transmission Corporation

[Docket No. CP86-319-000]

Take notice that on February 11, 1986, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-319-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Consolidated to drill two new wells and to construct and operate related pipline facilities at its Sabinsville storage pool in Tioga

County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated proposes to drill two new wells at its Sabinsville storage pool, to be known as Well Nos. N-2003-S and N-2004-S, and to construct and operate the pipeline facilities necessary to connect the wells to its storage pipeline system for injection and withdrawal use. Consolidated explains that the Sabinsville storage pool is developed from the depleted Oriskany Sand production field and is designed to provide a withdrawal rate at base gas conditions of 191,000 Mcf, at a pressure base of 14.73 psia. Consolidated explains that in recent years it has experienced a lower overall pool pressure than anticipated at minimum inventory conditions and has been unable to reach the expected late-season withdrawal rate. Consolidated states that the proposed new wells would be the most economical and efficient method of increasing the late-season withdrawal rate to the desired level.

Consolidated estimates that the proposed facilities would cost approximately $970,000, exclusive of filing fees, and states that the project would be financed from funds on hand or to be obtained from Consolidated's parent company, Consolidated Natural Gas Company. Consolidated would construct the proposed facilities in the spring of 1986 and estimates that the total project would take two months to complete. Consolidated proposes no new sales or services in connection with the proposed facilities.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Consolidated Gas Transmission Corporation

[Docket No. CP86-320-000]

Take notice that on February 11, 1986, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-320-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Consolidated to drill three new wells and to construct and operate related pipeline facilities at its Greenlick storage pool in Clinton and Potter Counties, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated proposes to drill three new wells at its Greenlick storage pool, to be known as Well Nos. RW-67, -68, and -501, and to construct and operate the pipeline facilities necessary to connect the wells to its storage pipeline system for injection and withdrawal use. Consolidated explains that the Greenlick storage pool is developed from the depleted Orinskany Sand production field and is designed to provide a withdrawal rate at base gas conditions of 306,000 Mcf, at a pressure base of 14.73 psia. Consolidated explains that in recent years it has experienced a lower overall pool pressure than anticipated at minimum inventory conditions and has been unable to reach the expected late-season withdrawal rate. Consolidated states that the proposed new wells would be the most economical and efficient method of increasing the late-season withdrawal rate to the desired level.

Consolidated estimates that the proposed facilities would cost approximately $1,945,000, exclusive of filing fees, and states that the project would be financed from funds on hand or to be obtained from Consolidated's parent company, Consolidated Natural Gas Company. Consolidated would construct the proposed facilities in the spring of 1986 and estimates that the total project would take three months to complete. Consolidated proposes no new sales or services in connection with the proposed facilities.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP86-332-000]

Take notice that on February 14, 1986, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP86-332-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities and services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to abandon by sale to Union Light, Heat and Power Company (Union) approximately 10.7 miles of 24-inch pipeline and 0.8 mile of 20-inch pipeline and appurtenant facilities and to abandon 37 points of delivery to Union, all located in Campbell and Kenton Counties, Kentucky. Columbia also proposes to abandon service under an operating agreement between Columbia, Union and The Cincinnati Gas and Electric Company (CG&E), designated as Columbia's FERC Gas Traiff, Volume No. 2, Rate Schedule X-16, which is related to the operation of the facilities proposed for abandonment.

Columbia states that the proposed abandonments would not result in any change in the service provided by Columbia to its existing customers. It is explained that, as a result of the abandonments, Columbia would achieve a reduction in its operating expenses and Union would be able to obtain certain operating efficiencies on its system. It is further stated that Union has agreed to purchase the pipeline at its original cost less depreciation and retirements at the time of sale, which amount is estimated to be approximately $568,000.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Erie Pipeline System

[Docket No. CP86-330-000]

Take notice that on February 14, 1986, Erie Pipeline System (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-330-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000. Applicant states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulation. Applicant further states that it has filed its proposed transportation rates pursuant to Rate Schedules F and I of its Original Volume No. 1 of its FERC Gas Tariff, in Docket No. CP86-329-000.

Comment date: March 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Interstate Power Company

[Docket No. CP86-316-000]

Take notice that on February 11, 1986, Interstate Power Company (Petitioner), 1000 Main Street, Dubuque, Iowa 52001, filed in Docket No. CP86-316-000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure requesting a declaratory

order wherein the Commission declines to assert jurisdiction over the transportation of natural gas by Petitioner through its distribution system and waives the Commisson's Regulations to the extent necessary to permit such transportation, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that it is entirely dependent upon Natural Gas Pipeline Company of America (Natural) for its supply of natural gas to serve its residential, commercial and industrial customers in the communities and adjacent rural areas in northwestern Illinois and northeastern Iowa. Petitioner further states that it is a natural-gas company as defined in the Natural Gas Act by reason on its ownership of approximately 28 miles of pipeline and its use thereof for the transportation of the gas it purchases from Natural at Hooppole, Illinois, across the Mississippi River to Petitioner's gas distribution system in the Clinton, Iowa, area.

Petitioner states that it also operates a separate gas distribution system providing gas service for residential, commercial and industrial use in fourteen incorporated communities and adjacent rural areas in north central Iowa, western Illinois and southern Minnesota, and Petitioner further states it is entirely dependent upon Northern Natural Gas Company, Division of Inter-North, Inc. (Northern), for its supply of natural gas to serve these communities.

It is explained that Petitioner makes no gas sales for resale, all of its gas sales and transportation rates are regulated by the state utility agencies, and it operates only its own distribution system. Thus, Petitioner states that it is only engaged in the local distribution of gas, despite the fact that its facilities cross states lines and it is therefore subject to the Commission's jurisdiction.

Petitioner asks the Commission to treat it as a local distribution company, rather than an interstate pipeline, by declining to assert jurisdiction over one or more proposed transportation arrangements. Petitioner claims that its proposed transportation for large volume loads would cause a bifurcation of the ratemaking process, with retail gas sales and Iowa transportation rates set by the Iowa State Commerce Commission, and other rater set by the Commission, and that such bifurcation would cause serious problems. It is further stated that the policies of the Commission and the Natural Gas Act would be effectuated by granting the requested declaratory order and thereby affirming state control over key aspects of Petitioner's local distribution of natural gas.

Comment date: March 20, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Caplitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5259 Filed 3-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-514-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status Certificate Applications, etc.; ARS Group, Inc. et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. ARS Group, Inc.

[Docket No. QF86-514-000]

March 5, 1986.

On February 5, 1986, ARS Group, Inc. (Applicant), of 15 Clark Road, Wellesley Hill, Massachusetts 02181 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Stratton, Maine. The facility will consist of a wood fired boiler and a steam turbine generator. The electric power production capacity of the facility will be approximately 40 MW.

2. Greenwood Ironworks

[Docket No. QF86-301-000]

March 4, 1986.

On November 19, 1985, Greenwood Ironworks (Applicant), of 420 Grove Avenue, Petersburg, Virginia 23803 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 500 kilowatt hydroelectric facility is located on the Appomattox River near Ettrick and Petersburg in Chesterfield County, Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Kaibab Industries

[Docket No. QF86-505-000]

March 5, 1986.

On January 28, 1986, Kaibab Industries (Applicant), of 4602 East Thomas Road, Phoenix, Arizona 85018 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's

regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Fredonia, Arizona. The facility will consist of a wood waste fired boiler and a condensing steam turbine generator. The next electric power production capacity of the facility will be 4,450 kW.

4. Texaco Producing Inc.

[Docket No QF86-524-000]

February 27, 1986.

On February 10, 1986, Texaco Producing Inc. (Applicant), of P.O. Box 10269, Bakersfield, California 93389 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the South Belridge Field, Kern County, California. The facility will consist of three units each comprising of a combustion turbine-generator and a heat recovery steam generator (HRSG). The steam from the HRSG will be used for enhanced oil recovery. The electric power production capacity of the facility will be 11.2 MW. The primary energy source will be natural gas. The facility was scheduled for start-up in January 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-5256 Filed 3-10-86; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Proposed Firm Power Allocations; Pick-Sloan Missouri Basin Program-Eastern Division

AGENCY: Western Area Power Administration, Energy.

ACTION: Notice of Proposed Firm Power Allocations to the Townsites of Fort Peck, Montana; Riverdale, North Dakota; and Pickstown, South Dakota.

SUMMARY: These three townsites are currently under the jurisdiction of the Corps of Engineers (Corps) and are presently receiving project-use power from Corps powerplants on the mainstem of the Missouri River. Pub. L. 99-88, enacted on August 15, 1985, authorizes the Secretary of the Army to transfer all rights, title, and interest of the United States in these townsites to newly formed municipal governments serving the inhabitants of the townsites. This legislation also authorized the Secretary of the Army to continue operational service (such as the supply of project-use electric power) to each municipality upon request for a period not to exceed 3 years after the transfer. By that time, these entities must have made their own arrangements to secure a source of electric power.

The Administrator of the Western Area Power Administration (Western) proposes to provide for the continuation of electric service by means of a firm power allocation to each of the newly formed municipalities (or other preference entitly who would be responsible for serving the municipal load). By publication of this notice in the **Federal Register**, a 30-day public comment period is hereby initiated for this proposed action. After due consideration of all public comments, a final decision will be made by the Administrator of Western pursuant to the authority delegated by the Secretary of Energy. The final decision and a discussion addressing major comments, criticisms, and alternatives offered during the comment period shall be published in the **Federal Register.** Additional information regarding this proposed allocation may be obtained at the **ADDRESS** below.

ADDRESS: Requests for further information should be submitted to the following address throughout the 30-day comment period. All written comments must be received at the following address no later than April 10, 1986:

Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings, MT 59101, (406) 657-6532.

SUPPLEMENTARY INFORMATION: While some variations have been made, the generally accepted minimum criteria for a municipality to be eligible for an allocation of firm power from Western's Billings Area Office require that it be within the marketing area of the Eastern Division of the Pick-Sloan Missouri Basin Program (P-SMBP), be incorporated, and own or lease its electric distribution system. All three of the townsites are within the established marketing boundaries of the Eastern Division. Two have completed incorporation proceedings and are making arrangements to acquire the electrical distribution system in their municipalities. The other entity, Fort Peck, Montana, is in the process of becoming incorporated and acquiring its electrical distribution system. As of this date, all three entities have formally requested an allocation of power from Western.

Western proposes to allocate to each entity an amount of power equal to the entity's maximum load in the summer 1985 season and the winter 1985-1986 season. Once those seasonal allocations have been set, they would remain fixed through the year 2000, the end of the existing marketing plan for the Eastern Division of P-SMBP. Any increase in load over and above those fixed allocations will have to come from an auxiliary supplier through arrangements made by the individual municipalities.

An allocation of firm power by Western to each of the municipalities (or other preference entity who would be responsible for serving the municipal load) in those amounts will not adversely affect other existing firm power customers. The loads were previously served from Corps powerplants as project use and the associated power and energy were not available to Western for marketing. The proposed arrangements will not change the resource that Western anticipated in the formulation of its most recent marketing plan, all of which is presently under contract to Western's other firm power customers.

Environmental Compliance

Western will conduct an analysis of this proposal pursuant to the National Environmental Policy Act of 1969 and Department of Energy Regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694-20701), as amended on January 6, 1983 (48 FR 685-686), and on February 25, 1985 (50 FR 7629-7630).

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the proposal relates to nonregulatory services provided by Western. Under 5 U.S.C. 601(2), a proposal with particular applicability is not considered "a rule" within the meaning the Act. Since this proposal is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, February 24, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-4717 Filed 3-10-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-2981-8]

Management Advisory Group Meeting

Under Pub. L. 92-463, notice is hereby given that a one and a half day meeting of the Management Advisory Group to the EPA Construction Grant Program (MAG) will be held on March 26-27, 1986, in Washington, DC, at EPA Headquarters, 401 M Street SW., Washington, DC 20460. The meeting room will be Conference Room 2, at the EPA Washington Information Center located on the ground floor of the Waterside Mall area. The time of the meeting will be 9 a.m. to 5 p.m. on March 26, and 8 a.m. to 1 p.m. on March 27.

The principal agenda item will be work on a MAG report on compliance and operation and maintenance of publicly owned wastewater treatment works, specifically on recommendations to be made by MAG. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any member of the public wishing to make comments is invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. For additional information, contact Georgette Brown at (202) 382-5859.

Dated: March 5, 1986.

Edwin L. Johnson,

Assistant Administrator for Water.

[FR Doc. 86-5243 Filed 3-10-86; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2981-4]

Water Quality Criteria; Ambient Aquatic Life Water Quality Criteria Documents

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for comments on ambient aquatic life water quality criteria documents.

SUMMARY: EPA announces the availability for public comment, and provides summaries of four ambient aquatic life water quality criteria documents. When published in final form after the review of public comments, these water quality criteria may form the basis for enforceable standards. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act.

DATE: Written comments should be submitted to the person listed directly below by May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 245-3030.

Availability of Documents

This notice contains summaries of four documents containing proposed ambient water quality criteria for the protection of aquatic life and its uses. Copies of the complete criteria documents may be obtained upon request from the person listed above. These documents are also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M St., SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of these documents are also available for review in the EPA Regional Office libraries. A list of the proposed documents is presented below:

1. Ambient Water Quality Criteria for Aluminum.
2. Ambient Water Quality Criteria for Chlorpyrifos.
3. Ambient Water Quality Criteria for Nickel.
4. Ambient Water Quality Criteria for Pentachlorophenol.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria beginning in 1973 with the publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act. A document addressing 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was announced on February 15, 1984 (FR 49 5831) completing the coverage of the 65 priority pollutants listed in 307(a)(1). Nine ambient water quality documents, including revision of seven of the 1980 documents, were released on July 29, 1985 (50 FR 30784).

Today EPA is announcing the availability for comment four proposed individual ambient aquatic life water quality criteria documents. Two of the documents, nickel and pentachlorophenol, upon final publication, will update and revise appropriate sections of the 1980 criteria documents. The other two, aluminum and chlorpyrifos, will address chemicals which have not been covered before.

The documents announced today will not contain information on the effects of these pollutants on human health. EPA anticipates the release of water quality advisories on aluminum and chlorpyrifos to specifically address human health concerns. Advisories will also be issued to update the human health section of the 1980 ambient water quality criteria documents for nickel and pentachlorophenol if a review of the available information indicate that such a revision is necessary. Both the criteria documents announced today and the water quality advisories addressing human health may form the basis for enforceable standards, when published in final form.

Dated: February 19, 1986.

Edwin L. Johnson,

Acting Assistant Administrator for Water.

Summary of Proposed Water Quality Criteria

1. Aluminum

Freshwater Aquatic Life. Freshwater organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, when the pH is between 6.5 and 9.0, if the four-day average concentration of aluminum does not exceed 150 μg/L more than once every three years on the average and if the one-hour average concentration does not exceed 950 μg/L more than once every three years on the average. EPA recommends applying the criteria for metals using the total recoverable method until a protocol for the measurement of "acid-soluble" metals is approved.

The allowed average excursion frequency of three years is the Agency's best scientific judgment of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

Saltwater Aquatic Life. EPA feels there is no significant need for a saltwater criterion for aluminum.

2. Chlorpyrifos

Freshwater Aquatic Life. Freshwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration of chlorpyrifos does not exceed 0.033 μg/L more than once every three years on the average and if the one-hour average concentration does not exceed 0.083 μg/L more than once every three years on the average.

The allowed average excursion frequency of three years is the Agency's best scientific judgment of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

Saltwater Aquatic Life. Saltwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a local important species is very sensitive, if the four-day average concentration of chlorpyrifos does not exceed 0.0015 μg/L more than once every three years on the average, and if the one-hour average concentration does not exceed 0.0038 μg/L more than once every three years on the average.

The allowed average excursion frequency of three years is the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution even in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for development water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Documents for Water Quality-Based Toxics Control (U.S. EPA, 1985).

3. Nickel

Freshwater Aquatic Life. Freshwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration (in μg/L) of nickel does not exceed the numerical value given by $e^{(0.8460[\ln(\text{hardness})]+1.1645)}$ more than once every three years on the average, and if the one-hour average concentration (in μg/L) does not exceed the numerical value given by $e^{(0.8460[\ln(\text{hardness})]+3.3612)}$ more than once every three years on the average. For example, at hardnesses of 50, 100 and 200 mg/L as $CaCO_3$ the four-day average concentrations of nickel are 88, 160 and 280 μg/L, respectively, and the one-hour average concentrations are 790, 1400 and 2500 μg/L. EPA recommends applying the criteria for metals using the total recoverable method until a protocol for the measurement of "acid-soluble" metals is approved.

The allowed average excursion frequency of three years is the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be

established if adequate justifications is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

Saltwater Aquatic Life. Saltwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration of nickel does not exceed 7.9 μg/L more than once every three years on the average, and if the one-hour average concentration of nickel does not exceed 71 μg/L more than once every three years on the average.

EPA recommends applying the criteria for metals using the total recoverable method until a protocol for the measurement of "acid-soluble" metals is approved.

The allowed average excursion frequency of three years is the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

4. Pentachlorophenol

Freshwater Aquatic Life. Freshwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration (in μg/L) of pentachlorophenol does not exceed the numerical value given by $e^{(1.005[pH]-5.366)}$ more than once every three years on the average, and if the one-hour average concentration (in μg/L) does not exceed the numerical value given by $e^{(1.005[pH]-4.908)}$ more than once every three years on the average. For example, at pH=6.5, 7.8, and 9.0, the four-day average concentrations of pentachlorophenol are 3.2, 12 and 40 μg/L, respectively, and the one-hour average concentrations are 5.1, 19 and 63 μg/L.

The allowed average excursion frequency of three years is the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

Saltwater Aquatic Life. Saltwater aquatic organisms and their uses should not be affected unacceptably, except possibly where a locally important species is very sensitive, if the four-day average concentration of pentachlorophenol does not exceed 8.1 μg/L more than once every three years on the average, and if the one-hour average concentration does not exceed 13 μg/L more than once every three years on the average.

The allowed average excursion frequency of three years in the Agency's best scientific judgement of the amount of time it will take an unstressed system to recover from a pollution event in which exposure to these pollutants exceeds the criteria. Stressed systems, for example one in which several outfalls occur in a limited area, would be expected to require more time for recovery. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific excursion frequencies may be established if adequate justification is provided.

Use of criteria for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Dynamic models are preferred for the application of these criteria. Limited data or other considerations might make their use impractical, in which case one must rely on a steady-state model. The Agency recommends the interim use of 1Q5 or 1Q10 for the Criterion Maximum Concentration (CMC) design flow and 7Q5 or 7Q10 for the Criterion Continuous Concentration (CCC) design flow in steady-state model for unstressed and stressed systems respectively. These matters are discussed in more detail in the Technical Support Document for Water Quality-Based Toxics Control (U.S. EPA, 1985).

[FR Doc. 86-5161 Filed 3-10-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1571]

Petitions for Reconsideration and Clarification and Applications for Review of Actions in Rulemaking Proceedings

March 5, 1986.

The following listings of petitions for reconsideration and clarification and applications for review filed in Commission rulemaking proceedings is published pursuant to CFR § 1.429(e). Oppositions to such petitions for reconsideration and clarifications and applications for review must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject. MTS and WATS Market Structure (CC Docket No. 78–72)
Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board (CC Docket No. 80–286)

Field By: Richard C. Schramm, Daniel J. Whelan & David K. Hall, Attorneys for the Bell Atlantic Telephone Companies on 2–10–86 & 2–24–86.
William A. Spratley, Bruce J. Weston, Victoria L. Mayhew & Barry Cohen, Attorneys for Office of the Consumers' Counsel, State of Ohio on 2–11–86.
William C. Sullivan, Linda S. Leggg, Paul G. Lane & Edward L. Eckhart, Attorneys for Southwestern Bell Telephone Company on 2–12–86.
Vincent L. Sgrosso & G. Thomas Abernathy, Jr., Attorneys for BellSouth Corporation on behalf of South Central Bell Telephone Company & Southern Bell Telephone and Telegraph Company on 2–21–86.
Leon T. Knauer, Kenneth D. Patrick & Luisa L. Lancetti, Attorneys for Puerto Rico Telephone Company on 2–21–86.
Saul Fisher, Melvin A. Cohen & Joseph DeBella, Attorneys for New York Telephone Company and New England Telephone and Telegraph Company on 2–21–86.
David Cosson & Paul G. Daniel, Attorneys for National Telephone Cooperative Association on 2–20–85 & 2–24–86.
Ronald T. LeMay, Vice President-General Counsel & James T. Roche, Attorney for United Telephone System, Inc., on 2–24–86.
Robert L. Barada, Maya A. Mathews & Stanley J. Moore, Attorneys for Pacific Bell on 2–24–86.

Subject: Policy Regarding Character Qualifications In Broadcast Licensing. (Gen Docket No. 81–500)
Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees. (BC Docket No. 78–108)

Filed By: Andrew J. Schwartzman & Henry Geller for The Office of Communication of the United Church of Christ and Telecommunications Research and Action Center on 2–13–86.
Joseph DeFranco & Howard F. Jaeckel, Attorneys for CBS Inc., on 2–14–86.
Jerome S. Boros, Attorney for Alden Television, Inc., & Alden Communications Corp on 2–24–86.
Benito Gaguine & Heidi P. Sanchez, Attorneys for Kannapolis Television Company, A Joint Venture on 2–24–86.
Richard L. Brown & David J. Kaufman, Attorneys for SPACE, The Satellite Television Industry Association, Inc. on 2–24–86.

Subject: Amendment of Part 97 of the Commission's Rules to Implement the Final Acts of the World Administrative Radio Conference, Geneva, 1979. (PR Docket No. 85–23)

Filed By: David B. Popkin on 2–18–86.

Subject: Amendment of Part 97 of the Commission's Rules to Permit Automatic Control of Amateur Radio Stations. (PR Docket No. 85–105, PM–4879)

Filed By: Walter E. Miller, (AJ6T) on 2–13–86.
Donald Simon, (NI6A) on 2–14–86 & 2–20–86.
S. E. Carlson, (KAERF) on 2–18–86.
Edward Novak, (N6DAM) on 2–18–86.
Robert T. Martin, (N6MZV) on 2–19–86.
Robert F. Franklin, (K6TP) on 2–19–86.
Alfred J. Dynarski, Jr., (WA6SYK) on 2–20–86.
Karl Fraser, (KK1A) on 2–20–86.
Robert J. Keller, (KY3R) on 2–21–86.
Warren C. Struven (W6CB) on 2–21–86.
Lawrence P. Kenney (WB9LOZ) on 2–24–86.
William F. Dickson II, (N6BAH) on 2–24–86.
William R. Danielson, (N6FQR) on 2–24–86.
Eric C. Williams, (WD6CMU) on 2–24–86.
John T. Smith, (KI4XO) on 2–24–86.
Richard K. Whipkey, (AD6X) on 2–24–86.
Donald M. McDougall, (W6OA) on 2–24–86.
Thomas A. Clark, (WA7GKD), Director for Tucson Amateur Packet Radio on 2–24–86.
Edward J. Ingber, (WA6AXX), President for Advanced Computer Controls, Inc., on 2–24–86.
Christopher D. Imlay, Attorney for The American Radio Relay League, Incorporated on 2–24–86.

Application for Review

Subject: Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Reno, Nevada and Redding, California) (MM Docket No. 83–374, RM's 4293 & 4484)

Filed By: Robert B. Jacobi & J. Brian DeBoice, Attorneys for Sarkes Tarzian, Inc., on 2–10–86.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 86–5242 Filed 3–10–86; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 86–68, et al.]

Comex, Inc., et al.; Applications

In re application of Comex, Inc., to establish additional facilities for one-way Station KC1295 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Nashua and Epsom, New Hampshire; CC Docket No. 86–68, File No. 23196–CD–P/L–1–85;

Ram Communications of Massachusetts, Inc., to establish an additional facility for one-way Station KSV956 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Andover, Massachusetts; File No. 21859–CD–P/L–1–85.

Memorandum Opinion and Order

Adopted February 27, 1986. Released March 5, 1986.

By the Common Carrier Bureau.

1. By *Memorandum Opinion and Order Designating Applications for Hearing,* Mimeo No. 2623, released February 14, 1986 (Designation Order), the captioned applications were designated for a consolidated hearing.

2. It has subsequently been brought to the Commission's attention that the Designation Order failed to dispose of a Petition to Deny and various related pleadings which had been filed by the parties. Accordingly, pursuant to § 1.113 of the Commission's Rules, we will set aside the Designation Order on our own motion. Such action will enable the Bureau to consider and decide the issues presented in the numerous pleadings which have been filed.

3. Accordingly, it is ordered, that the *Memorandum Opinion and Order Designating Applications for Hearing,*

Mimeo No. 2623, released February 14, 1986, is set aside.

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 86-5241 Filed 3-10-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federl Register** in which this notice appears. The requirements for comments are found in §572.603 of Title 46 of the Code of Federl Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 022-003930B-001.

Title: The Port Authority of New York and New Jersey and Universal Maritime Service Corp.

Parties:

The Port Authority of New York and New Jersey (Port)

Universal Maritime Service Corp. (Universal)

Synopsis: The proposed agreement supplements the parties' basic agreement providing for Universal's lease of the Red Hook Container Terminal, Brooklyn, New York. The purpose of Agreement No. 022-003930B-001 is to provide for the erection and installation of a second additional crane at a project cost of approximately $3,100,000. It also provides for the equipment rental payable to the Port for Universal's use of both the additional and the second additional crane. The parties have requested a shortened review period.

Agreement No.: 021-003964-001.

Title: City of Milwaukee and Tanco Terminals, Inc. Lease Agreement.

Parties:

City of Milwaukee (Port)

Tanco Terminals, Inc. (Tanco)

Synopsis: The proposed amendment would renew and extend the March 10, 1981 lease agreement with Tanco for an additional period of five (5) years commencing on March 1, 1986 and ending on February 28, 1991. Tanco would have tenant's rights to utilize the property for receipt, preparation, processing, handling, storage and/or shipping of liquid and other cargoes. The parties have requested a determination of subjectivity and a shortened review period.

Dated: March 6, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-5235 Filed 3-10-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-9]

A/S Ivarans Rederi, v. Compahia de Navegacao Lloyd Brasileiro, et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by A/S Ivarans Rederi against Companhia de Navegacao Lloyd Brasileriro, Companhia de Navegacao Maritima Netumar, Empresa Lineas Maritimas Argentinas S.A., Van Nievelt Goudriaan & Co. B.V., A. Bottacchi S.A. de Navegacion C.F.I. e I. and United States Lines (S.A.) Inc. was served March 5, 1986. The complaint alleges violations of sections 5(a) 10(a) (2) and 10(a) (3) of the Shipping Act, 1984 arising as a result of conduct by Respondents contrary to an order of the Federal Maritime Commission and contrary to the written terms of a revenue pooling agreement (Agreement No. 10027-10) approved by the Commission under the Shipping Act, 1916 and in effect (as restated) under the Shipping Act, 1984.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502-61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502-61, the initial decision of the presiding officer in this proceeding shall be issued by March 5, 1987, and the final decision of the Commission shall be issued by July 6, 1987.

John Robert Ewers,

Secretary.

[FR Doc. 86-5180 Filed 3-10-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Independent American Banc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Fededal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 30, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Independent American Banc Corp.*, Parma, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Parma, Ohio. Comments on this application must be received not later than April 2, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Associated Banc-Corp.*, Green Bay, Wisconsin; to acquire 100 percent of the voting shares of Randall Bank, Madison, Wisconsin.

2. *Community Financial Corp.*, Avilla, Indiana; to become a bank holding company by acquiring 80 percent of the

voting shares of Community State Bank, Avilla, Indiana.

Board of Governors of the Federal Reserve System, March 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5208 Filed 3-10-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D-0284]

Drug Stability of Liquid Feed Supplements; Availability of Guidelines

Correction

In FR Doc. 86-3504 beginning on page 6038 in the issue of Wednesday, February 19, 1986, make the following correction on page 6038 in the third column:

In the third complete paragraph, in the twelfth line, "§ 514.1(b)(x)" should read "§ 514.1(b)(5)(x)".

BILLING CODE 1505-01-M

National Institutes of Health

Consensus Development Conference on Preventing of Venous Thrombosis and Pulmonary Embolism; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Prevention of Venous Thrombosis and Pulmonary Embolism," sponsored by the National Heart, Lung, and Blood Institute; Division of Blood Diseases and Resources, and the NIH Office of Medical Applications of Research. The conference will be held March 24-26, 1986, in the Masur Auditorium of the Warren G. Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Deep venous thrombosis in the lower extremities is a common, age-related phenomenon. The importance of the problem lies not only in the significant morbidity associated with venous valve destruction and the postphlebitic syndrome, but also in the intimate but variable association between peripheral venous thrombosis and death from pulmonary embolism.

It has been estimated that venous thromboembolism accounts for some 300,000 hospitalizations per year and 50,000 deaths. It has long been recognized as one of the most important complications in medical and surgical patients. In addition, it is the most common cause of death in patients undergoing major orthopedic procedures, is the most frequent nonobstetrical cause of postpartum death, and is a major factor in the mortality of the large population of patients with chronic cardiac and pulmonary disease.

The high frequency of silent thrombosis and unpresaged embolism underlies the need for prophylaxis. Primary and secondary prevention are far superior to a policy based on treatment of clinical symptoms, and prevention should be the ultimate goal of the physician. In spite of the significance of the problem and the desirability of an aggressive approach to prophylaxis, however, prophylactic measures are not widely used by many physicians in their practice.

A number of high-risk groups of patients have been identified. This conference will assess the data concerning the relative risks in these groups and the various forms of prophylaxis that have been tested, including anticoagulants, antiplatelet agents, and mechanical methods. In this open forum, participants will evaluate the efficacy and safety of prophylaxis in the high-risk groups.

The key questions to be addressed at the conference include: What is the level of risk of venous thrombosis and embolism in various patient groups? What is the safety and efficacy of various forms of prophylaxis in these patient groups? What questions remain to be answered about prophylaxis of venous thromboembolism?

This consensus conference will bring together biomedical investigators, hematologists, surgeons, internists, epidemiologists, and representatives of the public. Following two days of presentations by medical experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and formulate a draft statement responding to the key conference questions. On the morning of the third day, Consensus Panel Chairman Harold Roberts, M.D., Professor of Medicine, University of North Carolina, will read this preliminary Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Michele Dillon, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852, (301) 468-6555.

Dated March 4, 1986.

Betty Beveridge,

Committee Management Officer, NIH.

[FR. Doc. 86-5179 Filed 3-10-86; 8:45 am]

BILLING CODE 4140-01-M

Establishment of the Interagency Committee on Learning Disabilities

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: As directed by section 9 of the Health Research Extension Act of 1985 (Pub. L. 99-158), the Director of the National Institutes of Health hereby establishes the Interagency Committee on Learning Disabilities (Committee). The Committee is to review and assess Federal research priorities, activities, and findings regarding learning disabilities.

The Committee is composed of representatives from the National Institute of Neurological and Communicative Disorders and Stroke, the National Institute of Child Health and Human Development, the National Institute of Allergy and Infectious Diseases, the National Eye Institute, the National Institute of Environmental Health Sciences, the Division of Research Resources of the National Institutes of Health, the Food and Drug Administration, the National Institute of Mental Health, the Department of Education, the Centers for Disease Control, the Environmental Protection Agency, the Health Resources and Services Administration, and the Office of Human Development Services. The Director of the NIH will chair the Committee. The National Institute of Child Health and Human Development is assigned operational responsibility for the Committee and its activities.

The Committee shall report to Congress on its activities including:

(1) Its estimate of the number of persons affected by learning disabilities and the demographic data which describe such persons;

(2) A description of the current research findings on the cause, diagnosis, treatment, and prevention of learning disabilities; and

(3) Recommendations for legislation and administrative actions to increase the effectiveness of research on learning disabilities and to improve the disseminaiton of the findings of such research; and respecting specific priorities for research in the cause, diagnosis, treatment, and prevention of learning disabilities. The Committee

shall terminate 90 days after the date of the submission of its report of Congress.

EFFECTIVE DATE: February 18, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Kavanagh, Ph.D., Associate Director, Center for Research for Mothers and Children, National Institute of Child Health and Human Development, Room 7C-03 Landow Building, 7910 Woodmont Avenue, Bethesda, Maryland 20892, (301) 496-5097.

Dated: March 3, 1986.

James B. Wyngaarden,

Director.

[FR Doc. 86-5178 Filed 3-10-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-86-1596]

Privacy Act of 1974: Proposed Amendment to System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of proposed amendment to existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act System of Records: HUD/H-11 Multifamily Tenant Certification System.

EFFECTIVE DATE: This notice shall become effective March 11, 1986.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Department Privacy Act Officer, (202) 755-6374. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Multifamily Tenant Certification System (HUD/H-11) contains information about individuals receiving housing assistance from the Department of Housing and Urban Development (HUD) under one of the following HUD programs: Section 8, Public/Indian Housing, Section 236 (including Section 236 RAP), Rent Supplement, Section 221(d)(3) BMIR, and Section 202/8. The system is used to improve the Department's capabilities to manage Housing Assistance Programs, to protect the Government's financial interest, and to assist in the verification of the accuracy of the tenant certification/recertification data furnished by the tenant. This amendment clarifies the categories of records in the system. It does not require the submission of a report of a new or amended system to the Congress or the Office of Management and Budget since there is no expansion in the types or categories of information maintained and no alteration in the purposes for which the information is maintained. The term "registration information" is substituted for the phrase "registration number or identification number." The notice is published below in its entirety, as amended. Previously, the system and a prefatory statement containing the general Routine Uses applicable to most of the Department's systems of record were published in the "Federal Register Privacy Act Issuances, 1984 Compilation, Volume II."

(5 U.S.C. 552a, 88 Stat. 1896; Section 7(d) Department of HUD Act (42 U.S.C. 3535(d))).

Issued at Washington, DC, February 24, 1986.

Judith L. Tardy,

Assistant Secretary for Administration.

HUD/H-11

SYSTEM NAME:

Multifamily Tenant Certification System.

SYSTEM LOCATION:

Headquarters and Field Offices. For a listing of Field Offices with addresses, see 24 CFR Part 16, Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving housing assistance from HUD under one of the following programs: Section 8, Pubic/Indian Housing, Section 236 (including Section 236 RAP), Rent Supplement, Section 221(d)3 BMIR, and Section 202/8.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes identification data such as name, Social Security Number (if available), alien registration information, address, and tenant unit number; financial data such as income and contract rent; tenant characteristics such as number in family, sex of family member and minority code; unit characteristics such as number of bedrooms; geographic data such as county code and census tract; and related information including information used to verify data in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

United States Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.*, and the Housing and Community Development Amendments of 1981, Pub. L. 97-35, 95 Stat. 408.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See routine uses paragraph in prefatory statement. Other routine uses: Federal, State, and local agencies—to verify the accuracy and completeness of the data provided; to HUD contractor—for processing certifications/recertifications; to the Social Security Administration and the Immigration and Naturalization Service—to verify alien status.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder, magnetic tape/disk/drum.

RETRIEVABILITY:

Name of tenant, address, Social Security or other identification number.

SAFEGUARDS:

File folders, automated records kept in a secured area. Access restricted to authorized individuals.

RETENTION AND DISPOSAL:

Obsolete records are destroyed or sent to storage facility in accordance with HUD Handbook 2225.6, Records Disposition Management: HUD Records Schedules.

SYSTEM MANAGER AND ADDRESS:

Director, Housing Information and Statistics Division, Office of Managment, Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with in 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed in relation to contesting the

contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals, other individuals and organizations, Federal, State, and local agencies. PHA staff/private owners/management agents.

[FR Doc. 86-5276 Filed 3-10-86; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-86-1597]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the name and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Evaluation of the Housing Voucher Demonstration
Office: Policy Development and Research
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Non-Profit Institutions
Estimated Burden Hours: 14,076
Status: Revision
Contact: David Einhorn, HUD, (202) 755-5574; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 13, 1986.

Proposal: Relocation Requirements—Section 312 Rehabilitation Loan and Urban Development Action Grant (UDAG) Programs
Office: Community Planning and Development
Form Number: None
Frequency of Submission: Recordkeeping
Affected Public: State or Local Governments
Estimated Burden Hours: 300
Status: New
Contact: Melvin J. Geffner, HUD, (202) 755-6336; Robert Fishman, OMB, (2020) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 13, 1986.

Proposal: Public Housing Program—Demolition or Disposition of Public Housing Projects Final Rule—24 CFR 970, Public Housing Demolition, Disposition and Conversion Handbook 7486.1
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, State of Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 3,600
Status: Revision
Contact: Richard L. Rivard, HUD, (202) 755-6640; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 10, 1986.

Proposal: Relocation Payment Claim Forms
Office: Community Planning and Development
Form Number: HUD-4000, 4001, 4002, 4003, 4004, and 4004A
Frequency of Submission: On Occasion
Affected Public: Individuals or Household, Farms, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 5,500
Status: Reinstatement
Contact: Melvin Geffner, HUD, (202) 755-6336; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 10, 1986.

Proposal: Contract and Subcontract Activity Reporting
Office: Community Planning and Development
Form Number: HUD-2516
Frequency of Submission: Quarterly
Affected Public: State or Local Governments
Estimated Burden Hours: 2,800
Status: Revision
Contact: Leroy P. Gonnella, HUD (202) 755-6092; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 28, 1986.

Proposal: Procurement Policies and Procedures Handbook (2210.3, REV 3)
Office: Administration
Form Number: HUD-441, 441.1, 442, 443, 661, 661.1, 662, 663, and 770
Frequency of Submission: On Occasion, Monthly, and Quarterly

Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 148,302
Status: Extension
Contact: Gladys Gines, HUD, (202) 755–5294; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1986.

Proposal: Request for Termination of Multifamily Mortgage Insurance
Office: Administration
Form Number: HUD–9807
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 38
Status: Extension
Contact: Frances Jones, HUD, (202) 755–7022; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1986.

Proposal: Solicitation Mailing List Application
Office: Administration
Form Number: SF–129
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 120
Status: Extension
Contact: Gladys Gines, HUD, (202) 755–5294; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1986.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 86–5277 Filed 3–10–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Meetings.

SUMMARY: This notice announces that representatives of the U.S. Fish and Wildlife Service (hereinafter the Service) will be in attendance at meetings of the Atlantic, Mississippi, Central, Pacific, and National Flyway Councils (Council) at the following times and locations:

DATES:

March 22, 1986—Pacific Flyway Council, 2:00 p.m.
March 23, 1986—Atlantic Flyway Council, 10:00 a.m.
—Mississippi Flyway Council, 9:00 a.m.
—Central Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3:00 p.m.

ADDRESS: Council meetings will be held at The MGM Grand Hotel, Reno, Nevada as follows:

Atlantic Flyway Council, Metro Room B, Mezzanine Level
Mississippi Flyway Council, Capitol Room 1, Lobby Level
Central Flyway Council, Capitol Room 4, Lobby Level
Pacific Flyway Council, Palace Room, Mezzanine Level
National Waterfowl Council, Capitol Room 4, Lobby Level.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240, telephone (202) 254–3207.

SUPPLEMENTARY INFORMATION: Flyway councils are organizations of State conservation agencies that share responsibility for migratory game bird management with the Service. The Council meetings noted above are scheduled in conjunction with the 51st North American Wildlife and Natural Resources Conference to be held March 21–26, 1986, at The MGM Grand Hotel, Reno, Nevada. The Service will be represented at the above meetings to facilitate discussions of various migratory game bird management and research programs, many of which are conducted jointly with the Service and with the Canadian Wildlife Service.

Dated: March 4, 1986.

Ronald E. Lambertson,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 86–5244 Filed 3–10–86; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[N–43254]

Realty Action; Lease/Purchase for Recreation and Public Purposes, White Pine County, NV

The following described public land has been identified and examined and is hereby classified as suitable for lease/purchase under the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 18 N., R. 62 E.,
Sec. 35, E^{2};
Sec. 36, all.
T. 18 N., R. 63 E.,
Sec. 31, unsurveyed, all that portion lying west of Bothwick Road.

This land contains approximately 1,440 acres. The actual legal descriptions and acreages will be delineated by U.S. Government survey prior to conveyance.

The State of Nevada Division of State Lands intends to use the land for a maximum security prison for the Nevada Department of Prisons. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purpose Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for electric transmission line purposes which have been granted to Mt. Wheeler Power, Inc. by Permit No. N–35513, under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

2. Those rights acquired by White Pine County by construction of County Road No. 19, Bothwick Road, under R.S. 2477 (43 U.S.C. 932).

3. Those rights granted by oil and gas leases, N–18639 and N–18640, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570. This patent is issued subject to the right of the prior permittees or lessees to use so much of

the surface of said land as is required for oil and gas exploration and development operations, without compensation to the lessee/patentee for damages resulting from proper oil and gas operations, for the duration of oil and gas leases, N–18639 and N–18640, and any authorized extension of that lease. Upon termination or relinquishment of said oil and gas lease, this reservation shall terminate.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Upon publication of this Notice of Realty Action in the **Federal Register** the above described public land will be segreated from all forms of appropriation under the public land laws and the general mining law, except for recreation and public purposes and leasing under the mineral leasing laws.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Ely District, Star Route 5, Box 1, Ely, Nevada. A public meeting will be held on April 1, 1986, between the hours of 2:00 p.m. to 4:00 p.m. and 7:00 p.m. to 9:00 p.m. in the BLM Ely District Office conference room.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301. In the absence of any objections, on the 60th day from the date of this publication, the classification will become effective and this notice of realty action will become the final determination of the Department of the Interior.

Dated: March 4, 1986.

Wayne M. Lowman,

Acting District Manager.

[FR Doc. 86–5130 Filed 3–10–86; 8:45 am]

BILLING CODE 4310-HC-M

[W–63093]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–63093 for lands in Sheridan County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–63093 effective June 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 4, 1986.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–5223 Filed 3–10–86; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1294, Block 62, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 28, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 3, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–5224 Filed 3–10–86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Advisory Commission will be held at 1:00 p.m., Tuesday, April 1, 1986, at the San Jose Mission Parish Hall, 6710 San Jose, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95–629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed include:

—Minutes of previous meeting
—Park Operations Update
—Los Compadres Update
—Archdiocesan Report
—City Report
—County Report
—Open Discussion.

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206 (512) 229–6009.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: February 28, 1986.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 86-5255 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-70-M

Environmental Statements for Wilderness Recommendations for National Park Service Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare Environmental Impact Statements for Wilderness Recommendations for National Park Service Units in Alaska.

SUMMARY: The National Park Service (NPS) is beginning preparation of wilderness recommendations and environmental impact statements (EIS) for 14 national parks, preserves and monuments in the State of Alaska as mandated by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, section 1317 (16 U.S.C. 3205). The affected National Park System units are Aniakchak National Monument and Preserve, Bering Land Bridge National Preserve, Cape Krusenstern National Monument, Denali National Park and Preserve, Gates of the Arctic National Park and Preserve, Glacier Bay National Park and Preserve, Katmai National Park and Preserve, Kenai Fjords National Park, Klondike Gold Rush National Historical Park, Kobuk Valley National Park, Lake Clark National Park and Preserve, Noatak National Preserve, Wrangell-St. Elias National Park and Preserve and Yukon-Charley Rivers National Preserve. Lands being considered within these units include those areas which have been determined, in the draft general management plans for each unit, to have the characteristics of wilderness required by the Wilderness Act. In total approximately 17.8 million acres will be considered for designation as wilderness.

Interested and affected groups, organizations, and individuals will be kept informed of progress of the effort and proposals developed.

Scoping meetings will be held throughout Alaska and in some cities in the contiguous United States. Meetings will be advertised in local media. The purposes of scoping meetings are (1) to familiarize the public with wilderness management by the National Park Service, with emphasis on aspects that are, under ANILCA, unique to Alaska units; (2) to offer for consideration various options for additions to the National Wilderness Preservation System; and (3) to solicit ideas and information from the public about the socioeconomic and environmental impacts of the designations of additional wilderness in 14 National Park System units in Alaska. The public will also be encouraged to suggest additional alternative actions which have not been considered by NPS and to describe measures which could be taken to mitigate impacts of proposed actions, so that they may be considered in preparation of the environmental impact statements (EIS).

FOR FURTHER INFORMATION CONTACT: Linda Nebel, Cheif of Planning, National Park Service, 2525 Gambell St. #107, Anchorage, Alaska 99503, Telephone: (907) 271-2690.

Dated: February 26, 1986.

Boyd Evison,

Regional Director.

[FR Doc. 86-5253 Filed 3-10-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 1, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 26, 1986.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Hartford County

South Windsor, *Windsor Farms Historic District*, Roughly Main St. bounded by Strong Rd., US 5, I 291 and Connecticut River

Litchfield County

Torrington, *South School*, 362 S. Main St.

KENTUCKY

Campbell County

Newport, *Salem Methodist Episcopal Church and Parsonage*, 810 York St.

MARYLAND

Harford County

Darlington vicinity, *Gray Gables*, 4528 Conowingo Rd.

MONTANA

Cascade County

Great Falls, *Randall, Harry E., House*, 1003 Fourth Ave. N

Jefferson County

MacHaffie Site (24JF4)

Missoula County

Frenchtown, *St. John the Baptist Catholic Church*, Mullan Rd.

Park County

Cooke, *Cooke City Store*, Main St.

NEW HAMPSHIRE

Grafton County

Littleton, *United States Post Office and Courthouse—Littleton Main*, 165 Main St.

Strafford County

Dover, *United States Post Office—Dover Main*, 133-137 Washington St.

Winnipesaukee County

Laconia, *United States Post Office—Laconia Main*, 33 Church St.

NEW YORK

Onondaga County

Syracuse, *South Salina Street Historic District*, 111 W. Kennedy St., 1555-1829 and 1606-1830 S. Salina St.

OHIO

Mahoning County

Youngstown, *Reuben McMillan Free Library*, 305 Wick Ave.

OREGON

Baker County

Unity, *Unity Ranger Station (Depression-Era Buildings TR)*, Wallowa—Whitman National Forest

Clackamas County

Zigzag vicinity, *Zigzag Ranger Station (Depression-Era Buildings TR)*, *Mt. Hood National Forest*

Cook County

Prineville, *Lamonta Compound—Prineville Supervisor's Warehouse (Depression-Era Buildings TR)*, Ochoco National Forest

Curry County

Gold Beach, *Gold Beach Ranger Station (Depression-Era Buildings TR)*, Siskiyou National Forest

Deschutes County

Bend vicinity, *Pauline Lake Guard Station (Depression-Era Buildings TR)*, Deschutes National Forest

Douglas County

Glide, *Glide Ranger Station (Depression-Era Buildings TR)*, Umpqua National Forest

Idleyld Park vicinity, *Diamond Lake Guard Station (Depression-Era Buildings TR)*, Umpqua National Forest

Grant County

John Day, *John Day Compound, Supervisor's Office (Depression-Era Buildings TR)*, Malheur National Forest
John Day, *Supervisor's Office No. 1001 (Depression-Era Buildings TR)*, Malheur National Forest

Hood River County

Cascade Locks, *Cascade Locks Work Center (Depression-Era Buildings TR)*, Mt. Hood National Forest
Parkdale, *Parkdale Ranger Station (Depression-Era Buildings TR)*, Mt. Hood National Forest

Jackson County

Butte Falls vicinity, *Imnaha Guard Station (Depression-Era Buildings TR)*, Rogue River National Forest
Butte Falls, *Butts Falls Ranger Station (Depression-Era Buildings TR)*, Rogue River National Forest

Josephine County

Cave Junction vicinity, *Store Gulch Guard Station (Depression-Era Buildings TR)*, Siskiyou National Forest
Cave Junction *Cedar Guard Station No 1019 (Depression-Era Buildings TR)*, Siskiyou National Forest

Klamath County

Klamath Falls vicinity, *Lake of the Woods Ranger Station (Depression-Era Buildings TR)*, Winema National Forest

Lake County

Bend vicinity, *Cabin Lake Guard Station (Depression-Era Buildings TR)*, Deschures National Forest

Wallowa County

Enterprise, *Lick Creek Guard Station (Depression-Era Buildings TR)*, Wallowa-Whitman National Forest

SOUTH CAROLINA

Charleston County

Charleston, *Charleston Old and Historic District (Boundary Increase)*, Corner E. Bay and Hasell Sts.

Cherokee County

Gaffney, *Gaffney Commercial Historic District (Gaffney MRA)*, N. Limestone St. roughly bounded by
Granard St., Cherokee Ave., Petty, and E. Meadow Sts.
Gaffney, *Gaffney Residential Historic District (Gaffney MRA)*, Roughly bounded by Floyd Baker Blvd.,
Johnson St., College and Rutland Aves., and Limestone St.
Gaffney, *Irene Mill Finishing Plant (Gaffney MRA)*, W side of Buford St. between Liberty and Logan Sts.
Gaffney, *Jefferies House (Gaffney MRA)*, 306 S. Grannard St.
Gaffney, *Limestone Springs Historic District (Gaffney MRA)*, O'Neal St. Extension and Limestone College Campus
Gaffney, *Robbs House (Gaffney MRA)*, 310 W. Buford St.
Gaffney, *Sarratt House (Gaffney MRA)*, 217 Marion St.
Gaffney, *Settlemyer House (Gaffney MRA)*, 915 N. Limehouse St.
Gaffney, *Victor Cotton Oil Company Complex (Gaffney MRA)*, W side of Frederick St. between Hill and Johnson Sts.
Gaffney, *West End Elementary School (Gaffney MRA)*, Floyd Baker Blvd. and Broad St.

Richland County

Brevard, Keziah Goodwyn Hopkins, House (Lower Richland County MRA)
Chappell House
Laurelwood (Lower Richland County MRA)
Magnolia (Lower Richland County MRA)
Congaree, *Grovewood (Lower Richland County MRA)*, SC 769
Eastover vicinity, *Farmers and Merchants Bank Building (Lower Richland County MRA)*, Main St.
Eastover vicinity, *Good Hope Baptist Church (Lower Richland County MRA)*, SC 378 near Sandhill Rd.
Eastover vicinity, *Goodwill Plantation (Lower Richland County MRA)*, Off US 378
Eastover vicinity, *Scott, Claudius, Cottage (Lower Richland County MRA)*, CR 1182
Eastover vicinity, *St. Thomas' Protestant Episcopal Church (Lower Richland County MRA)*, Near jct. of US 601 and SC 263
Eastover, *Byrd, J.A., Mercantile Store (Lower Richland County MRA)*, Main St.
Eastover, *Zion Protestant Episcopal Church (Lower Richland County MRA)*, SC 263
Gadsden vicinity, *Oakwood (Lower Richland County MRA)*, SC 48
Gadsden vicinity, *Richland Presbyterian Church (Lower Richland County MRA)*, CR 1313
Gadsden, *Kaminer, John J., House (Lower Richland County MRA)*, Near jct. SC 48 and SC 769
Hopkins vicinity, *Barber House (Lower Richland County MRA)*, Off CR 37
Hopkins, *Hopkins Graded School (Lower Richland County MRA)*, Jct. of CR 37 and CR 1412
Hopkins, *Hopkins Presbyterian Church (Lower Richland County MRA)*, Near jct. of CR 66 and CR 86
Ballentine vicinity, *Koon, John Jacob Calhoun, Farmstead*, CR 27 off US 76/176
Blythewood, *Hoffman, George P., House*, N. of CR 54

UTAH

Box Elder County

Plymouth, *Plymouth School (Public Works Buildings TR)*, 135 S. Main

Cache County

Logan, *Women's Residence Hall (Public Works Buildings TR)*, Utah State University
Richmond, *Richmond Community Building (Public Works Buildings TR)*, 6 W. Main

Morgan County

Morgan, *Morgan Elementary School (Public Works Buildings TR)*, 75 N. 100 East
Morgan, *Morgan High School Mechanical Arts Building (Public Works Buildings TR)*, 20 N. 100 East

Sanpete County

Fairview, *Fairview City Hall (Public Works Buildings TR)*, 85 S. State
Manti, *Manti National Guard Armory (Public Works Buildings TR)*, 50 E. 100 North
Mt. Pleasant, *Mt. Pleasant National Guard Armory (Public Works Buildings TR)*, 10 N. State

Sevier County

Salina, *Salina Municipal, Building and Library (Public Works Buildings TR)*, 90 W. Main

Utah County

Payson, *Payson Presbyterian Church*, 160 S. Main
Pleasant Grove, *Fugal Dugout House*, 630 N. 400 East
Provo, *Recreation Center for the Utah State Hospital (Public Works Buildings TR)*, 1300 E. Center
Provo, *Superintendent's Residence at the Utah State Hospital (Public Works Buildings TR)*, 1079 E. Center
Spanish Fork, *Spanish Fork National Guard Armory (Public Works Buildings TR)*, 360 N. Main
Springville, *Springville High School Art Gallery (Public Works Buildings TR)*, 126 E. 400 South

Wasatch County

Brighton vicinity *Cloud Rim Girl Scout Lodge (Public Works Buildings TR)*, Lake Brimhall

Washington County

Hurricane *Hurricane High School (Public Works Buildings TR)*, 34 S. 110 West

Wayne County

Grover *Grover School (Public Works Buildings TR)*, Off UT 117

VIRGINIA

Petersburg (Independent City)
Centre Hill Historic District, Roughly bounded by Henry, Jefferson, Franklin and N. Adams Sts.

WASHINGTON

Chelan County

Leavenworth vicinity, *Chatter Creek Guard Station (Depression-Era Buildings TR)*, Wenatchee National Forest
Leavenworth, *Leavenworth Ranger Station (Depression-Era Buildings TR)*, Wenatchee National Forest

Lewis County

Packwood vicinity, *La Wis Wis Guard Station No. 1165 (Depression-Era Buildings TR)*, Gifford Pinchot National Forest

Marion County

Detroit vicinity, *Breitenbush Guard Station (Depression-Era Buildings TR)*, Willamette National Forest

Mason County

Hoodsport, *Hamma Hamma Guard Station (Depression-Era Buildings TR)*, Olympic National Forest

Okanogan County

Tonasket, *Lost Lake Guard Station (Depression-Era Buildings TR)*, Okanogan National Forest
Winthrop vicinity, *Early Winters Ranger Station Work Center (Depression-Era Buildings TR)*, Okanogan National Forest

Randle County

Randle vicinity, *North Fork Guard Station No. 1142 (Depression-Era Buildings TR)*, Gifford Pinchot National Forest
Randle, *Randle Ranger Station—Work Center (Depression-Era Buildings TR)*, Gifford Pinchot National Forest

Snohomish County

Granite Falls, *Verlot Ranger Station—Public Service Center (Depression-Era Buildings TR)*, Mt. Baker-Snoqualmie National Forest.

[FR Doc. 86-5252 Filed 3-10-86; 8:45 am]
BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Garrison Diversion Unit, ND, Draft Supplemental Environmental Statement; Availability

[INT-DES 86-9]

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft supplemental environmental statement on the Garrison Diversion Unit.

This statement discusses impacts associated with modifications as proposed in the Garrison Diversion Unit Commission *Final Report* of December 20, 1984. Major modifications addressed in this draft supplemental environmental statement are (1) constructing and operating a 113,360-acre irrigation project; (2) developing lands for wildlife mitigation and enhancment; (3) restricting irrigation to lands that drain or can be drained into the Missouri River Basin; (4) deferring construction of Lonetree Reservior and building Sykeston Canal; (5) constructing Glover Reservior while preserving Kraft Slough; (6) providing water level control features for national wildlife refuges; and (7) providing for new and improved recreation areas. Written comments may be submitted to the Regional Director or Project Manager within 60 days after filing.

A public hearing will be held beginning at 9:30 a.m., CST, April 15, 1986, at the Doublewood Ramada Inn, Bismarck, North Dakota.

Copies are available at the following offices:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7624, Department of the Interior, Washington, D.C. 20240, Telephone: (202) 343-4991
Director, Management Operations Center, Attn: Code 823, Engineering and Research Center, P.O. Box 25007—Federal Center, Denver, CO 80225, Telephone: (303) 236-6963
Regional Director, Bureau of Reclamation, P.O. Box 36900, Billings, MT 59107-6900, Telephone: (406) 657-6605
Project Manager, Missouri-Souris Projects Office, Bureau of Reclamation, P.O. Box 1017, Bismarck, ND 58502, Telephone: (701) 255-4011, Ext. 541

Copies will also be available for inspection in libraries within the project area.

Dated: March 6, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-5260 Filed 3-10-86; 8:45 am]
BILLING CODE 4310-09-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Software Productivity Consortium, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), Software Productivity Consortium, Inc., has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of Software Productivity Consortium, Inc., by the addition of Martin Marietta Corporation. The additional notification was filed for the purpose of extending the protections of the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to Software Productivity Consortium, Inc., and its general areas of planned activities are given below.

Software Productivity Consortium, Inc., with the addition of Martin Marietta Corporation, consists of the following firms: Allied Corporation; The Boeing Company; Ford Aerospace and Communications Corporation; General Dynamics Corporation; Grumman Aerospace Corporation; Harris Corporation; Lockheed Missile and Space Company, Inc.; McDonnell Douglas Corporation; Martin Marietta Corporation; Northrop Corporation; Science Applications International Corporation; TRW Inc., United Technologies Corporation; and Vitro Corporation. The purpose of the current effort is to undertake research and developmental engineering in advanced technologies relating to productivity tools and techniques to be used in the development of complex computer software.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-5238 Filed 3-10-86; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Preliminary Planning Estimates for Program Year (PY) 1986 for Basic Labor Exchange Activities Under the Wagner-Peyser Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the preliminary planning estimates for Program Year (PY) 1986 for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Richard C. Gilliland, Director, United States Employment Service (Attention:TEES), 601 D Street, NW., Washington, DC 20213. Telephone: 202-376-6750.

SUPPLEMENTARY INFORMATION: In accord with section 6(b)(5) of the Wagner-Peyser Act the Employment and Training Administration is publishing preliminary estimates for each State's projected allotment for Program Year (PY) 1986 (July 1, 1986, through June 30, 1987). The total amount of funds currently available for distribution to States for public employment service activities is $744,135,000. This amount reflects a 4.2 percent reduction in the Fiscal Year (FY) 1986 appropriation mandated by the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177). An additional $14,000,000 is being withheld to finance postage costs associated with the conduct of employment service activities. Funds will be distributed in accord with formula criteria established in section 6(a) and (b) of the Wagner-Peyser Act. Civilian labor force and unemployment data for the twelve months ending September 1985 were used in making the formula calculations.

The Secretary reserved 3 percent of the total available funds as authorized under section 6(b)(4) of the Wagner-Peyser Act and announced two proposed funding methodologies in the **Federal Register** on January 17, 1986 for public comment. 51 FR 2589. After careful review of all public comment, the Department has determined to allocate the set-aside by the same methodology used since the Wagner-Peyser Act was amended by the Job Training Partnership Act (Pub. L. 97-300).

Under this method, $22,324,050 of the funds currently available is distributed to States whose share of resources decreased from their total allotment in PY 1985 to the PY 1986 basic formula amount.

Signed at Washington, DC on March 7, 1986.

Roger D. Semerad,

Assistant Secretary of Labor for Employment and Training.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
PRELIMINARY PY 1986 WAGNER-PEYSER PLANNING ESTIMATES.
02-24-1986

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1*	STEP 2**	TOTAL	ALLOTMENT***
Alabama	11,635,157	0	61,329	61,329	11,696,486
Alaska	7,061,254	1,027,850	0	1,027,850	8,089,104
Arizona	7,857,252	0	0	0	7,857,252
Arkansas	6,982,802	0	833,570	833,570	7,816,372
California	73,524,267	0	0	0	73,524,267
Colorado	9,240,337	0	0	0	9,240,337
Connecticut	8,772,462	0	0	0	8,772,462
Delaware	2,015,992	0	62,507	62,507	2,078,499
District of Columbia	5,195,434	0	620,203	620,203	5,815,637
Florida	28,831,979	0	0	0	28,831,979
Georgia	15,719,581	0	0	0	15,719,581
Hawaii	2,779,954	0	331,856	331,856	3,111,810
Idaho	5,883,280	856,381	0	856,381	6,739,661
Illinois	35,232,279	0	0	0	35,232,279
Indiana	16,425,895	0	0	0	16,425,895
Iowa	8,871,706	0	1,059,057	1,059,057	9,930,763
Kansas	6,363,426	0	0	0	6,363,426
Kentucky	10,546,314	0	0	0	10,546,314
Louisiana	13,202,830	0	0	0	13,202,830
Maine	3,498,731	509,282	0	509,282	4,008,013
Maryland	11,701,202	0	0	0	11,701,202
Massachusetts	15,089,185	0	7,997	7,997	15,097,182
Michigan	28,791,450	0	0	0	28,791,450
Minnesota	12,093,063	0	0	0	12,093,063
Mississippi	7,701,465	0	919,360	919,360	8,620,825
Missouri	13,761,450	0	0	0	13,761,450
Montana	4,807,847	699,840	0	699,840	5,507,687
Nebraska	5,778,086	841,070	0	841,070	6,619,156
Nevada	4,673,733	680,318	0	680,318	5,354,051
New Hampshire	2,667,524	0	0	0	2,667,524
New Jersey	20,520,989	0	0	0	20,520,989
New Mexico	5,395,249	785,343	0	785,343	6,180,592
New York	53,533,395	0	6,390,531	6,390,531	59,923,926
North Carolina	16,675,897	0	0	0	16,675,897
North Dakota	4,895,826	712,646	0	712,646	5,608,472
Ohio	31,858,383	0	0	0	31,858,383
Oklahoma	12,240,005	0	1,461,146	1,461,146	13,701,151
Oregon	8,567,493	0	1,022,742	1,022,742	9,590,235
Pennsylvania	33,329,929	0	0	0	33,329,929
Puerto Rico	9,202,746	0	0	0	9,202,746
Rhode Island	2,578,669	0	305,857	305,857	2,884,526
South Carolina	8,680,286	0	0	0	8,680,286
South Dakota	4,524,869	658,649	0	658,649	5,183,518
Tennessee	13,646,130	0	0	0	13,646,130
Texas	44,661,458	0	0	0	44,661,458
Utah	9,896,439	1,440,545	0	1,440,545	11,336,984
Vermont	2,119,708	308,549	0	308,549	2,428,257
Virginia	15,191,993	0	0	0	15,191,993
Washington	12,919,075	0	0	0	12,919,075
West Virginia	5,716,638	216,411	0	216,411	5,933,049
Wisconsin	13,625,281	0	0	0	13,625,281
Wyoming	3,510,613	511,011	0	511,011	4,021,624
FORMULA TOTAL	719,997,008	9,247,895	13,076,155	22,324,050	742,321,058
Guam	348,197	0	0	0	348,197
Virgin Islands	1,465,745	0	0	0	1,465,745
NATIONAL TOTAL	721,810,950	9,247,895	13,076,155	22,324,050	744,135,000

* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1985 TO THE PY 1986 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1985 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 12 STATES LOSING IN RELATIVE SHARE FROM PY 1985 TO THE PY 1986 BASIC FORMULA AMOUNT.

*** - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

[FR Doc. 86-5390 Filed 3-10-86 8:45 am]
BILLING CODE 4510-30-C

Mine Safety and Health Administration

[Docket No. M-86-4-C]

Petition for Modification of Application of Mandatory Safety Standard; Badger Coal Co.

Badger Coal Company, 145 Sago Road, Buckhannon, West Virginia 26201 has filed a petition to modify the application of 30 CFR 75.505 (mines classed gassy; use and maintenance of permissible electric face equipment) to its Grand Badger No. 1 Mine (I.D. No. 46-04819) located in Upshur County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery receptacles on permissible, battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded pin in lieu of padlocks. The pin is permanently attached and eliminates the possibility of locks and keys being lost as well as mechanical failure of the lock due to dust and moisture in the mine atmosphere.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5181 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-201-C]

Petition for Modification of Application of Mandatory Safety Standard; Consolidation Coal Co.

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Shoemaker Mine (I.D. No. 46-01436) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. The conditions in the return air course in the DuPont Shaft Entries have deteriorated, resulting in adverse roof conditions which have made the return air course hazardous to travel and examine. Rehabilitation of the affected area would expose miners to hazardous working conditions.

3. As an alternate method, petitioner proposes to establish three monitoring stations where the air leaves the affected areas. Certified persons will take air and gas measurements when making weekly examinations of the affected return air course and record the results.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5182 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-209-C]

Petition for Modification of Application of Mandatory Safety Standard; D. & K. Coal Co., Inc.

D. & K. Coal Company, Inc., P.O. Box 418, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.503 (electric face equipment; maintenance) to its No. 4 Mine (I.D. No. 46-06115) located in Braxton County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device in lieu of padlocks. The metal locking devices will be designed, installed and used to prevent the threaded rings form unintentionally lossening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5183 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-3-C]

Petition for Modification of Application of Mandatory Safety Standard; Eastern Associated Coal Corp.

Eastern Associated Coal Corp., One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundment and impounding structures; abandonment) to its Joanne Mine (I.D. No. 46-01430) located in Marion County, West

Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a plan for abandonment of an impoundment be submitted prior to abandonment.

2. As an alternate method, petitioner proposes to leave the impounding structure in its present condition and allow the present owner to be responsible for maintenance.

3. Eastern sold and conveyed the water impoundment to the Joanne Sportman's Club in 1976 and thereafter utilized the pond water for its cleaning plant. In June 1985, petitioner closed the mine, ceased taking water from the pond and currently has no control over the subject site. The impoundment is now inactive for coal mining purposes.

4. The present owner submitted a plan to MSHA and the West Virginia Department of Natural Resources Dam Control Section on May 12, 1983 showing their capability to maintain and monitor the pond.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5184 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-174-C]

Petition for Modification of Application of Mandatory Safety Standard; H & B Coal Company, Inc.

H & B Coal Company, P.O. Box 6, Regina, Kentucky 41559 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-06807) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electic face equipment.

2. The mine is in the No. 1 Elkhorn Seam ranging from 41 to 48 inches in height, with ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because the canopy would restrict and cramp the operator's seating position and limit his or her field of vision, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards. Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5185 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-3-M]

Petition for Modification of Application of Mandatory Safety Standard; Homestake Mining Co.

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.14029 (machinery repairs and maintenance) to its Homestake Gold Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that repairs or maintenance on equipment not be performed until the power is off and the machinery is blocked against motion.

2. As an alternate method, petitioner proposes to replace worn out brushes on the generators of the Ross and Yates Hoist MG sets while the power is off but the armatures are rotating.

3. Petitioner states that the commutator is smooth and there are no protruding objects to strike a person or catch his or her clothing.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5186 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-9-C]

Petition for Modification of Application of Mandatory Safety Standard; International Anthracite Corp.

International Anthracite Corporation, Box 546, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its B and M Tunnel (I.D. No. 36-01781) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return air courses be separted from belt haulage entries.

2. The mine is currently being ventilated on a blowing system. The intake air splits and ventilates the belt tunnel, east gangway and west gangway. Intake air ventilating the east/west gangway maintains a positive pressure against the abandoned shuttle entries, ventilates active shuttle entries and exhausts out the return at the Lucas Slope in the east or ventilation/haulage drifts in the west.

3. Petitioner states that thirty-five to forty thousand cubic feet of air (235-270 FPM) passes through the gangway which is enough to dilute any gases, provide an adequate supply of oxygen and keep air velocities down (+/-250 FPM). With only one tunnel driven it is not possible to have a separate return or belt entry,

nor are the normal hazards associated with flat lying bituminous seams present with the tunnel in rock behind the pitching seam.

4. In further support of this request, petitioner proposes to install regulators to increase the differential pressure between the intake and return airways, increase the capabilities of the ventilating system to dilute and carry away harmful gases and contaminants, and insure improved ventilation of the working faces.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5187 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-8-C]

Petition for Modification of Application of Mandatory Safety Standard; Kaiser Coal Corp.

Kaiser Coal Corporation, 102 South Tejon Street, Suite 800 P.O. Box 2679, Colorado Springs, Colorado 80901-2679 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its York Canyon Mine (I.D. No. 29-00095) located in Colfax County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries.

2. Petitioner states that the use of a two-entry development system for longwall mining of blocks of coal is necessary for safety due to constant changes in roof conditions, roof composition and occurrence of numerous slips and faulting. Utilization of a three-entry system would introduce significantly greater roof exposure, increased roof falls, excessive chain pillar loading and rib roll hazards.

3. As an alternate method, petitioner proposes to use two-entry systems for development of retreating longwall panels. A computerized remote monitoring system for carbon monoxide and methane and a fire detection system will be installed.

Additional measures regarding ventilation, construction of stoppings and overcasts, roof support, communication and other precautions will be implemented.

4. For these reasons, petitioner requests a modification of the standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5190 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-10-C]

Petition for Modification of Application of Mandatory Safety Standard; International Anthracite Corp.

International Anthracite Corporation, Box 546, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its B and M Tunnel (I.D. No. 36-01781) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install a continuous carbon monoxide(CO) detection system in all belt haulage entries used to ventilate the working places. The system will be capable of identifying any activated sensor so that a map can be used to pinpoint the potential problem area.

3. The monitors will be located in by each transfer point, at intervals along the belt not to exceed 2,500 feet and in the immediate return. Monitors will be visually examined once every twenty-four hours when belts are operating, inspected weekly by a qualified person and calibrated monthly. CO monitors are set to indicate a warning at 20.00 ppm and danger at 40.00 ppm. The methane monitors are set to indicate a warning at 1.00 volume percentum and danger at 2.00 volume percentum.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5188 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-11-C]

Petition for Modification of Application of Mandatory Safety Standard; International Anthracite Corp.

International Anthracite Corporation, Box 546, Valley View, Pennsylvania 17983 has filed a petiton to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its B and M Tunnel (I.D. No. 36-01781) located in Schuylkill County, Pennslyvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. The section power center is located in the gangway outby the working faces in the mouth of a shuttle entry and there is no nearby return for the ventilating air.

3. As an alternative method, petitioner proposes to ventilate the working faces

and section power center with belt haulage air. In support of this request, petitioner proposes to install a continuous monitoring system for carbon monoxide and methane.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virgina 22203. All comments must be postmarked or received in that office on or before April 10, 1986.

Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5189 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-5-C]

Petition for Modification of Application of Mandatory Safety Standard; Mid-Continent Resources, Inc.

Mid-Continent Resources, Inc., 1058 Road 100, P.O. Box 158, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Dutch Creek No. 1 Mine (I.D. No. 05-00301) and its Dutch Creek No. 2 Mine (I.D. No. 05-00469) both located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, petitioner proposes that whenever the configuration of intake air entries does not permit an underground transformer station to be ventilated by intake air that is coursed directly into a return air course, the station will be housed in a fireproof structure equipped with fireproof doors and a fire suppression system. When the temperature within the fireproof structure reaches a temperature of not more than 200 degrees Fahrenheit, the fireproof doors will close, incoming power to the structure will be deenergized, and an alarm will be activated.

3. The return air coursed from such an installation will be coursed and maintained separate and apart from the intake air escapeway.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5191 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-13-C]

Petition for Modification of Application of Mandatory Safety Standard; Quarto Mining Co.

Quarto Mining Company, Box 231, Clarington, Oho 43915 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device in lieu of padlocks. The metal locking devices will be designed, installed and used to prevent the threaded rings from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlocked.

4. Operators of permissible, mobile, battery-powered machines affected by this modifications will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under loads, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5192 Filed 3-10-86 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-7C]

Petition for Modification of Application of Mandatory Safety Standard; Saginaw Mining Co.

Saginaw Mining Company, P.O. Box 275, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Saginaw Mine (I.D. No. 33-00941) located in Belmont County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from loosening.

3. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5193 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-199-C]

Petition for Modification of Application of Mandatory Safety Standard; Skidmore Coal Co.

Skidmore Coal Company, 123 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Skidmore Slope (I.D. No. 36-07461) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face must be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5194 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-2-M]

Petition for Modification of Application of Mandatory Safety Standard; Southwestern Portland Cement Co.

Southwestern Portland Cement Company, P.O. Box 1547, Odessa, Texas 79760 has filed a petition to modify the application of 30 CFR 56.13020 (compressed air) to its Odessa Plant (I.D. No. 41-00060) located in Ector County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that compressed air not be directed toward a person.

2. As an alternate method, petitioner proposes to install blow-off stations for the purpose of removing cement dust from clothing to prevent skin irritation and discomfort.

3. In support of this request petitioner states:

a. Safety glasses or goggles will be worn by persons at blow-off stations whenever they are in use;

b. Persons will be forbidden to direct air at lacerations or other unhealed skin injuries or at any person's eyes or face; and

c. Signs will be posted at each station reminding employees to wear safety glasses, not to direct air toward eyes or face, or toward cuts, scratches or other skin openings.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments.These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5195 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-29-M]

Petition for Modification of Application of Mandatory Safety Standard; Stauffer Chemical Co.

Stauffer Chemical Company, P.O. Box 513, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.21097 (general requirements for blasting) to its Big Island Mine (I.D. No. 48-00154) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting units of capacity suitable for the number of holes in a round to be blasted are to used unless the round is fired from the surface when all persons are out of the mine.

2. The mine is a trona mine and methane gas is not generated by trona itself. At present, there is no permissible blasting machine of sufficient capacity available. The small capacity permissible machines available would introduce the hazard of misfires and poorly broken faces by having too much

resistance for the capacity of the machine, or not having sufficient holes per round to adequately break the trona.

3. As an alternate method, petitioner proposes to use nonpermissible blasting machines. Each shotfirer would check for methane before entering a working face and before shooting the face. The shotfirer would visually inspect the face area and muck pile after shooting. Each machine operator would independently check for methane gas before entering a face area.

4. For these reasons, petitioner requests a modification of the standard.

Request for comments

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5196 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-204-C]

Petition for Modification of Application of Mandatory Safety Standard; T.&R. Coal Co., Inc.

T.&R. Coal Company, Inc., P.O. Box 418, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.503 (electric face equipment; maintenance) to its No. 3 Mine (I.D. No. 46-06114) located in Braxton County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device in lieu of padlocks. The metal locking devices will be designed, installed and used to prevent the threaded rings from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 2, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5197 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-20-M]

Petition for Modification of Application of Mandatory Safety Standard; Tri-Con Mining Inc.

Tri-Con Mining Incorporated, P.O. Box 83730, Fairbanks, Alaska 99708 has filed a petition to modify the application of 30 CFR 57.4560 (mine entrances) to its Grant Mine Project (I.D. No. 50-01314) located in Yukon River County, Alaska. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that timber used for ground support in exhaust openings that are designated as escapeways be provided with a fire suppression system, covered with shotcrete or gunite, or coated with fire-retardant paint for a distance of at least 200 feet inside the portal or collar.

2. Petitioner states that during spring and summer all the shaft timbers are water soaked from surface runoff and melting of frost and during fall and winter the shaft timber becomes coated with frost and ice. Both conditions make the shaft fire resistant.

3. Dry chemical fire extinguishers are located at the top and bottom of the shaft. The 200 foot is the only working level. There is an alternate escapeway located 250 feet from the shaft and additional escape exits from the 200 foot level will be completed in several months.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 10, 1986. Copies of the petition are available for inspection at that address.

Dated: March 3, 1986.

Patricia, W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-5198 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., on Tuesday, April 1, 1986 in Conference Room N-3437D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

The purpose of the meeting is to discuss the following items on the Agenda summarized below:

1. ERISA Administration—Update.

2. Pension and Welfare Benefits Administration Priorities.

3. Role of the ERISA Advisory Council.

4. Establishment of Council Work Groups.

Individuals or organizations wishing to submit written statements pertaining to the items on the Agenda or any other aspects of ERISA, should send 20 copies to Edward F. Lysczek, Executive Secretary, ERISA Advisory Council, U.S.

Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8753. Papers will be accepted and included in the record of the meeting if received on or before March 28, 1986.

Signed at Washington, DC, this 4th day of March, 1986.

Dennis M. Kass,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 86-5199 Filed 3-10-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-17]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee and the Aerospace Research and Technology Informal Subcommittee.

DATES: Date and time: April 9, 1986, 8:30 a.m. to 5:00 p.m.; April 10, 1986, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Activities Building, Hampton, Virginia 23665.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne O. Teague, Code R, National Aeronautics and Space Administration, Washington, DC 20546; Telephone: (Area Code 202/453-2727).

SUPPLEMENTARY INFORMATION: The Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST).

The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the AAC and the Space Sytems and Technology Advisory Committee (SSTAC) and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Robert B. Ormsby, is comprised of 23 members. Total anticipated attendance is 75 members. The meeting will be open to the public up to the seating capacity of the room (approximately 100 persons including the Subcommittee members and other participants).

Type of meeting: Open.

Agenda

April 9, 1986

8:30 a.m.—Chairperson's Remarks.
9 a.m.—NASA/OAST Overview.
9:45 a.m.—Aeronautics Overview.
11 a.m.—Parallel Program Review Sessions.
5:00 p.m.—Adjourn.

April 10, 1986

8:30 a.m.—Continuation of Parallel Program Review Sessions.
3 a.m.—Summary Session.
4:30 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

March 3, 1986.

[FR Doc. 86-5205 Filed 3-10-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

National Endowment for the Arts; Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Companies Section) to the National Council on the Arts will be held on March 25-29, 1986 from 8:30 a.m. to 5:30 p.m., Room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

March 3, 1986.

[FR Doc. 86-5211 Filed 3-10-86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Agency Policy and Procedures for Differing Professonal Opinions

The Nuclear Regulatory Commission (NRC) has made some revisions to its policy and procedures concerning Differing Professional Opinions. The basic policy has remained the same, but certain procedures have been added to increase timeliness and to strengthen the process. The policy of the Nuclear Regulatory Commission is to maintain a working environment that encourages employees to make known their best professional judgments even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices. Each differing professional opinion of an NRC employee will be evaluated on its own merit. Further, each differing professional opinion will be pursued to resolution and the employee's statement of differing professional opinon, together with the agency's final response, will be made available to the public to ensure the openness of NRC decisions that may affect the public.

It is not only the right but the duty of all NRC employees to make known their best professional judgments on any matter relating to the mission of the agency. Moreover, both the general public and the Nuclear Regulatory Commission benefit when the agency seriously considers NRC employees' differing professional opinions that concern matters related to the Agency's mission. This policy is intended to assure all employees the opportunity to express differing professional opinions in good faith, to have these opinons heard and considered by NRC management, and to be protected against retaliation in any form.

The original policy and procedures for Differing Professional Opinions were issued as an NRC Manual Chapter in September of 1980. After several years of use as well as reviews by a Special Review Panel and the NRC Office of Inspector and Auditor, the Manual Chapter was revised and reissued. It is

Manual Chapter NRC—4125 dated July 23, 1985.

During the process of revision, both the Commission and the Executive Director for Operations reaffirmed their continued full support for the Differing Professional Opinion policy and procedures.

Single copies of Manual Chapter 4125 can be obtained by writing to the U.S. Nuclear Regulatory Commission, Office of Resource Management, Washington, DC 20555. In addition, a single copy of the proposed policy and procedures is available, and may be inspected and copied in the Commission's Public Document Room at 1717 H Street NW., Washington, DC. For further information contact Richard A. Hartfield, telephone 301–492–7834.

Dated at Bethesda, Maryland, this 25th day of February 1986.

For the Nuclear Regulatory Commission.

Ronald Scroggins,

Director, Office of Resource Management.

[FR Doc. 86–5267 Filed 3–10–86 8:45 am]

BILLING CODE 7590–01–M

Intent To Establish a Federally Funded Research and Development Center

ACTION: Notice of intent.

SUMMARY: The Nuclear Regulatory Commission (NRC) announces that it is considering the establishment and sponsorship of a Federally Funded Research and Development Center (FFRDC) for waste management technical assistance and research as a potential solution to problems of conflict of interest and continutiy of technical assistance. A draft of certain elements of the solicitation package is available for public comment. The package includes a draft statement of work for operating the Center, draft proposal instructions and evaluation criteria, and mandatory requirements. The Commission is also requesting comments on specific questions included in this package. The Commission has not made a commitment to sponsor the FFRDC. Final approval by the Commission will be subject to review of the responses to this Notice and to finding a highly qualified contractor to manage and operate the FFRDC.

DATE: Comment period expires April 24, 1986.

ADDRESSES: A draft of certain elements of the solicitation package is available for public inspection and copying at the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street NW., Washington, DC 20555, telephone 202/634–3273. Copies can also be obtained from the Division of Contracts, Room 2223, 4550 Montgomery Avenue, Bethesda, MD 20814; or will be mailed upon written request to the Division of Contracts, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Ms. Mary Mace, Contract Negotiator. Comments should be submitted to the address immediately above.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Mace, Contract Negotiator, Division of Contracts, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301/492–4282).

SUPPLEMENTARY INFORMATION:

Background

Under the Nuclear Waste Policy Act of 1982 (NWPA), the U.S. Nuclear Regulatory Commission (NRC) is responsible for licensing the construction, operation, and closure of facilities required for a high-level radioactive waste disposal system, which are to be designed, constructed, operated, and closed by the U.S. Department of Energy (DOE). The facilities of the DOE waste disposal system will include mined geologic repositories; monitored retrievable storage (MRS) facilities or other interim storage measures; and transportation vehicles, casks and handling equipment.

NRC's high-level waste licensing program currently faces two critical problems with respect to contracted technical assistance and research. First, the continued use of contractors who also have a contractual relationship with DOE's high-level waste program, or with any other party who might be a participant in NRC's high-level waste licensing hearings, may give rise to an organizational conflict of interest situation, and may draw into question the independence and freedom from bias af the contractors' work and, consequently, of NRC's licensing decisions. According to the definition in 41 CFR 20–1.54, an "organizational conflict of interest" means that:

> " . . . A relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (2) may result in its being given an unfair competitive advantage."

Second, the long-term continuity of NRC's waste management technical assistance and research program over the next twenty years or more is threatened as a result of efforts to avoid organizational conflict of interest situations (contractors are required to choose between doing work for NRC's program or for DOE's much larger program) and by the possible recompetition of technical work. The loss of contractor expertise has a significant impact to NRC's technical program because of its evolving nature and NRC's need for contractor experts to appear as expert witnesses at adjudicatory hearings.

In light of the problems discussed above, the NRC belives that the long-term contractual support offered by a Federally Funded Research and Devlopment Center (FFRDC) for waste management technical assistance and research is a potential solution for providing the special long-term contractual relationship needed by NRC in order to alleviate potential conflict of interest situations and provide long-term continuity.

Notice of Intent

This Notice of Intent indicates that NRC is considering the establishment and sponsorship of an FFRDC for waste management technical assistance and research as a solution to the problems of conflict of interest and long-term continuity. The FFRDC would be entitled, "The Center for Nuclear Waste Regulatory Analyses" (hereinafter referred to as the "Center"). The publication of this Notice of Intent, however, is not a commitment on the part of NRC to establish and sponsor an FFRDC. Any final decision to do so must be approved by the Commission and be in compliance with Office of Federal Procurement Policy (OFPP) Letter No. 84–1, "Federally Funded Research and Development Centers" (April 4, 1984).

Technical assistance and research tasks to be performed by the Center would encompass the following general areas: (1) Waste systems engineering and integration; (2) long-term performance of a geologic setting; (3) long-term performance of an engineered barrier system; (4) performance of an MRS and repository during opertion; (5) special analytical evaluations; and (6) transportation, environmental impacts, and other areas related to the Nuclear Waste Policy Act.

The period of performance for the Center would extend throughout the duration of NRC's high-level waste licensing responsibilitities estimated to be twenty years or more). The period of performance for the contract to manage and operate the Center would be for five years (to be renewed every five years, subject to comprehensive review by the NRC). The level of effort for the first five

years would build up from about 20–25 staff years during the first year to about 50 staff years durig the fifth year and may increase by up to 50%, depending on program development and appropriations availability. ("Staff years" includes direct staff plus support staff.)

The NRC screening criteria for the Center are: (1) No conflict of interest with the high-level waste program; (2) operation of the Center as a not-for-profit organization free of control by any organization whose affiliations could give rise to conflict of interest; (3) capability to provide long-term continuity in resources to NRC throughout the duration of its high-level waste program under NWPA (e.g., 20 years or more); (4) multi-disciplined staff; (5) access to existing equipment and facilities (e.g., computational and experimental laboratories); (6) expertise in the areas of technical assistance and research identified above; and (7) capability to provide testimony by expert staff during NRC adjudicatory hearings.

A draft of certain elements of the solicitation package is available for public comment. The package includes a draft statement of work for operting the Center, draft proposal instructions and evaluation criteria, and mandatory requirements. The Commission is also requesting comments on specific questions included in this package. Final Commission approval to issue a solicitation package will be subject to review of the public comments on this draft solicitation package. Final Commission approval to establish and sponsor the Center will be subject to finding a highly qualified contractor to manage and operate the Center.

Dated at Bethesda, Maryland, this 6th day of March, 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Acting Executive Director for Operations.

[FR Doc. 86-5266 Filed 3-10-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352]

Philadelphia Electric Co., Limerick Generating Station Unit 1; Exemption

I

The Philadelphia Electric Company (PECo./the licensee) is the holder of Facility Operating License No. NPF-39 which authorizes operation of the Limerick Generating Station, Unit 1 at a power level not in excess of 3293 megawatts thermal for each unit. The facility is a boiling water reactor located at the licensee's site in Montgomery County, Pennsylvania. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Paragraphs III.C.3 and III.D.3 of Appendix J to 10 CFR Part 50 require that containment isolation valves which may provide a pathway for leakage of containment atmosphere are required, on at least a 24 month frequency, to have their leakage measured for comparison with the limiting value of 0.6 L_a for Type B and Type C tests.

The Philadelphia Electric Company proposed a one-time extension to the Surveillance Requirements for Technical Specification 4.6.1.2 which would allow the 24 month interval for conducting Type C tests with gas on 27 isolation valves to be extended by 12 weeks until May 26, 1986. The staff has found that approval of the proposed extension is warranted and is authorized by the granting of this one-time exemption so that Unit 1 may continue to operate until a shutdown is required on May 26, 1986 to perform other extensive surveillance and maintenance activities.

III

The NRC staff has evaluated the licensee's basis for requesting the extension in the surveillance interval and finds that not granting this exemption would require the licensee to shut down the plant on March 3, 1986 for a period of about two weeks to conduct the testing. Granting of this exemption is likely to result in a negligible reduction in containment integrity during the 12 week extension period. In evaluating the changes to the Technical Specifications and the associated exemption, the staff reviewed the licensee's technical justifications for the requested extension. The staff reviewed the licensee's position that these tests cannot be conducted during power operations and that therefore a shutdown would be required to perform the tests. The staff reviewed the types of valves involved to ascertain that these are not the types of valves used in boiling water reactors which have a greater propensity to require intensive maintenance to maintain their leaktight integrity. The staff considered the uses of these valves to ascertain that they are not used during normal plant operations in the relatively more demanding applications such as modulating valves to continuously control flow rates or pressure. The staff reviewed available data provided by the licensee on similar valves used elsewhere in the industry which supports the licensee's position that these valves have traditionally good maintenance histories in the industry. The staff also reviewed previous leakage test results on the specific valves subject to the exemption request and has found that there is substantial margin between the valves previously measured and the limiting values in Appendix J and the Technical Specifications to accommodate any additional degradation likely to occur during the period of the extension. The details of the above described review are discussed in the attached Safety Evaluation. Based on the information provided by the licensee, the staff's evaluation of the licensee's submittals, the NRC staff concludes that the licensee has provided an adequate basis for the conclusion that postponing the subject local leak rate tests until May 26, 1986 is likely to have little or no effect on containment integrity.

The Commission has amended its regulations, effective on January 13, 1986, in 10 CFR 50.12 (50 FR 50764–50778) to modify the criteria for granting exemptions from its regulations. The amended regulations in 10 CFR 50.12 state that the Commission will not consider granting an exemption unless special circumstances are present. In its letter of February 25, 1986 the licensee has addressed two of those special circumstances which are applicable to this exemption request.

The licensee states that the special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that application of the regulation in 10 CFR Part 50, Appendix J for the Type C leakage testing of 27 containment isolation valves within 24 months, i.e. by March 3, 1986, of their initial tests versus the requested one-time extension until May 26, 1986 is not necessary to achieve the underlying purpose of the rule. Appendix J states that a purpose of the tests is to assure that leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications or associated bases.

The licensee has provided various bases for its conclusion that the requested delay of 12 weeks is not likely to result in a situation wherein the measured leakage from these valves would cause the limitations of the technical specifications to be exceeded. These bases, which are discussed in more detail in the enclosed Safety Evaluation and the licensee's submittals, include the licensee's characterization of these valves as being of the type which

traditionally have good maintenance histories, are not used in the relatively more demanding applications and which have shown in their initial leakage tests that they do not contribute an undue proportion of either the total measured containment leakage or the technical specification allowable leakage values. On these bases the staff agrees that it is unlikely that the delay in the testing of the subject 27 valves would result in measured leakage that would cause the allowable technical specification values to be exceeded. Thus the NRC staff concludes that the underlying purpose of Appendix J in this regard, to provide assurance that leakage shall not exceed technical specification allowable values, will be met with this one-time extension of the test schedule.

The licensee also states that the special circumstances of 10 CFR 50.12(a)(2)(v) are present in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

The exemption is temporary since it provides relief from the requirement to conduct the subject tests only from March 3, 1986 until during a shutdown which shall begin no later than May 26, 1986. The licensee submits that it has made a good faith effort to comply with the requirements of the regulation in that it has tested al but 27 valves out of a total population of over 200 valves subject to such testing by the date initially required by Appendix J and the technical specifications. The licensee also describes its attempts to minimize the number of valves which would require the schedular relief by proceeding with the tests of all valves necessary to permit operations until May 26, 1986 which could be tested without requiring the shutdown of the plant. This effort was undertaken following the delay between the completion of low power testing activities and issuance of the full power license. Thus the NRC staff concludes that the requested exemption meets the criterion of providing only temporary relief and has been accompanied by a good faith effort to comply with the regulation.

Based upon the staff's findings that postponing the local leak rate tests from March 3 until May 26, 1986 is likely to have little or no effect on containment integrity and the staff's assessment of the special circumstances associated with this request for an exemption the NRC staff finds that operation of Limerick Unit 1 during the proposed extension period is acceptable. Therefore, the staff finds that the proposed temporary exemption from 10 CFR 50, Appendix J, Paragraph III.D.3 is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants the exemption as follows:

An exemption is granted from the requirement to conduct Type C testing on containment isolation valves at an interval no greater than 24 months as stated in 10 CFR 50, Appendix J, Paragraph III.D.3. This exemption is granted for the period specified in the licensee's December 18, 1985 request for exemption (from March 3, 1986 until May 26, 1986) and is only applicable to 27 valves in Limerick Unit 1 as indicated in the modified Technical Specification Table 3.6.3-1 accompanying the issuance of Amendment No. 2 to License No. NPF-39.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (51 FR 7344, March 3, 1986).

A copy of the Commission's Safety Evaluation dated March 3, 1986 related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

This Exemption is effective upon issuance and is to expire at midnight on May 26, 1986.

Dated at Bethesda, Maryland this 3rd day of March 1986.

For the Nuclear Regulatory Commission.

Robert Bernero,

Director, Division of BWR Licensing.

[FR Doc. 86-5268 Filed 3-10-86; 8:45 am]

BILLING CODE 7590-01-M

Sequoyah Fuels Corp. (Sequoyah Facility); Memorandum and Order; Notice of Informal Hearing and Opportunity To Become a Party

[Docket No. 40-8027-MLA-2, ASLBP No. 86-524-01-MLA-2]

March 5, 1986.

I. Introduction

Please take notice that, on February 20, 1986, the Nuclear Regulatory Commission issued an Order instituting an informal hearing in this matter. Pursuant to the Commission's Order, the undersigned was designated presiding officer for this matter on February 25, 1986.

The Commission instituted this proceeding in response to petitions for a hearing filed by the Native Americans for a Clean Environment Client Council (NACE), the National Water Center (NWC), the Arkansas Peace Center (APC), Morton Newmark, Marjorie A. Spees, and Earth First! Austin (EFA). The hearing will concern Sequoyah Fuels Corporation's (SFC) application under 10 CFR 20.302(a) for disposal of floride sludge and contaminated noncombustible material and storage of raffinate sludge on site at its Sequoyah Facility near Gore, Oklahoma. By October 1, 1986, SFC is to propose a plan to dispose of, rather than store, the raffinate sludge.

II. How To Participate

The Commission's Order directed the presiding officer to request from NACE, NWC, APC, Newmark, Spees and EFA, filings detailing their standing to participate and their complaints concerning the license amendment. The Order also directed the presiding officer to provide a similar opportunity to petition to be heard by other interested persons. The Order authorized the presiding officer: (1) To request, at his discretion, written submissions and documents; (2) to set schedules; (3) to entertain statements from those who do not desire to become parties or cannot satisfy the requirements for party status, and (4) to hear oral presentations if necessary.

The Commission directed that those who wish to become parties (other than the NRC Staff and SFC) must set forth with particularity and in writing:

1. Their interest in the proceeding;

2. How their interest may be affected by the results of the proceeding, including a statement of the reasons why they should be made parties that makes particular reference to:

a. Their right under the Atomic Energy Act to be made a party;

b. The nature and extent of their property, financial, or other interest in the proceeding; and

c. The possible effect of any order that may be entered in the proceeding on their interest; and

3. The specific aspect or aspects of the subject matter of the proceeding on which they wish to be heard.

Each of the foregoing points shall be addressed in separate paragraphs concisely stated. (Petitioners who are parties to the proceeding on SFC's application concerning the UF_6 to UF_4

conversion facility may refer to their petition in that proceeding to the extent that information remains valid.)

In submitting the information called for in item 3 above, petitioners are to describe the matters raised in the application which they plan to address with specific complaints.

A determination that petitioners have standing to participate as parties to the proceeding will be governed by existing agency precedents pursuant to 10 CFR 2.714(d). See the Commission's Order and *Rockwell International Corp.* (Energy Systems Group Special Nuclear Materials License No. SNM–21), LBP–83–65, 18 NRC 774 (1983). The *Rockwell* case relied on *Nuclear Engineering* (Sheffield, Illinois Low Level Radioactive Waste Disposal Site) ALAB–473, 7 NRC 737 (1978), and stated at page 3 that:

. . . The practical tests are that the petition must show (1) that the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding, and (2) that the asserted interest of the petitioner in achieving a particular result is at least arguably within the zone of interests protected by the statute involved.

If the presiding officer finds that the hearing petitions or any intervention petition should be denied *in toto* for lack of standing or any other reason, that determination, which must be in writing, will become the final agency action within thirty days unless the Commission, on its own initiative, undertakes a review of that decision.

In furnishing the information called for above, petitioners may also respond to the March 3 letter to the presiding officer from counsel for SFC. Specifically, petitioners may respond to SFC's position stated in that letter that: (1) This proceeding should not be consolidated with the existing proceeding concerning the proposed UF_6 to UF_4 conversion facility, and (2) this proceeding should be deferred. If it so desires, NRC Staff may also respond.

Staff counsel has advised that Staff's review of the application pertaining to disposal of materials other than raffinate sludge is still in its early stages and might be impacted by the forthcoming application to dispose of raffinate sludge. The latter application is to be submitted by October 1, 1986. Staff is requested to provide bimonthly reports on the progress of its review to SFC, petitioners and the presiding officer.

In view of this, petitioners will not be required to submit their detailed complaints with regard to the application at this time. The dates for the submission of specific complaints and for Staff to indiate whether it wishes to be a party will be set after considering petitioners' and SFC's views on whether their proceeding should be consolidated with the proceeding concerning the UF_6 to UF_4 conversion facility and whether this proceeding should be deferred. At this time, petitioners must submit only the information called for above. This will permit a ruling on their standing to become parties.

Those petitioners who are admitted as parties will, in the future, be required to describe specifically any deficiencies in the application, cite particular sections or portions of the application which relate to the deficiency, and state in detail the reasons why a particular section or portion of the application is deficient. This material is to be submitted under oath or affirmation and shall state the relief sought with respect to such deficiency complaint. Petitioners must also submit all data and material in their possession which supports or illustrates each of the deficiencies complained of. Data and material from generally availabale publications may be cited rather than furnished. Petitioners must also state what relief they seek with respect to each of their complaints. A broad statement requesting denial or recision of the license or its amendment without stating why such extreme relief is appropriate will not satisfy the requirement to state the relief sought.

On or before April 10, 1986, NACE, APC, Newmark, Spees, EFA, and anyone else, including governmental entities, who wishes to become a party shall file the information called for in items 1 to 3, above.

III. How and Where To File

A. Information Called for by This Notice and Order

The original and two copies of information called for by this Notice and Order is to be filed with the Docketing and Service Branch of the Office of the Secretary, U.S. Nuclear Regulatory Commission, 1717 H Street, NW., Washington, DC 20555. Single copies of such filings shall also be served on SFC, Stephen H. Lewis, Assistant Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and the presiding officer by either personally delivering it or mailing it, properly addressed and stamped, by April 10, 1096.

B. Other Written Submissions

The original and two copies of all other written submissions made by a party shall also be filed with Docketing and Service Branch with single copies mailed or personally delivered to the presiding officer, SFC, Mr. Lewis, and all other parties on or before the due date. Attorneys representing a party or petitioner must file the orignial and two copies of their notice of appearance with the Docketing and Service Branch, with service on all other parties, upon being retained.

C. Service List

In the Memorandum and Order identifying the parties to this proceeding, the presiding officer will establish an official service list of parties who are to receive copies of written submissions in this proceeding.

IV. Duty of the Applicant

In order to permit petitioners to comply wtih the 30-day deadline to submit the information required, SFC must ensure that, to the extent not already provided, the application, the license sought to be amended, and all correspondence pertaining to its application, are immediately upon receipt of this Notice and Order: (1) Made available to petitioners for inspection and copying, and (2) forwarded to the presiding officer. This materal shall be made available at a convenient location in the vicinity of the SFC facility and at such other locations as may be indicated by requests. The material shall be available for inspection and copying during business hours and during reasonable periods evenings and weekends. This material, together with the material submitted by petitioners, and any other material called for by the persiding officer, will form the Hearing File on which the presiding officer will base his decision.

V. Presiding Officer's Initial Ruling

Upon receipt of petitioner's submissions, the presiding officer will evaluate the material in the Hearing File. The presiding officer will then rule on each petitioner's rithts to become a party to this proceeding. When submitted, the presiding officer will also review petitioners' complaints and supporting material. Im making this review, the presiding officer may rule that the petitioners's complaints: (1) Are admissible for consideration; (2) are beyond the scope of this proceeding; (3) constitute requests for relief which the presiding officer lacks the power to grant; (4) are too vague to permit consideration; or (5) are otherwise

inadmissible. If necessary, the presiding officer will call for additional submissions prior to making the rulings contemplated by this paragraph. In the absence of such a request, no further submissions are to be made.

Petitioners are hereby put on notice that the presiding officer may rule on the merits of the entire matter based on the initial submission of complaints.

VI. Informal Hearing

To the extent the presiding officer finds petitioners complaints admissible, he either may order additional submissions from the parties, or schedule an oral presentation, or both. If an oral presentation is scheduled, it will take place in the vicinity of the SFC facility. The parties will be permitted to present testimony and argument, but cross-examination will not be permitted. The parties may, however, suggest questions to the presiding officer to be posed by him. Discovery is not permitted.

If the NRC Staff does not elect to participate as a party to this proceeding, the presiding officer may seek information from the Staff directly. In that event, any information received will be served on the parties to the proceeding by the presiding officer.

VII. Limited Appearances

Those who do not wish to become parties but wish to submit a statement to the presiding officer may do so by mailing their statement to the Commission's Secretary, properly addressed and stamped, on or before April 10, 1986. Should the presiding officer determine that a petitioner may not be a party to this proceeding, the material submitted by that petitioner will be treated as such a limited appearance statement. Limited appearance statements are not part of the Hearing File.

VIII. Schedule for Decision

The presiding officer intends to issue a decision in this proceeding as promptly as feasible following receipt of petitioners' complaints, with a goal of 120 days if additional submissions are required following receipt of the complaints. No petition for review will be entertained by the Commission regarding the presiding officer's decision. However, the Commission may review the decision on its own initiative.

Order

For all the foregoing reasons and upon consideration of the entire record in this matter, it is, this 5th day of March 1986, Ordered:

1. That on or before April 10, 1986, the Native Americans for a Clean Environment Client Council, the National Water Center, the Arkansas Peace Center, Morton Newmark, Marjorie A. Spees, and Earth First! Austin shall file a petition to participate as described in the foregoing memorandum;

2. That any other person wishing to participate shall file a similar petition by the same date;

3. That this informal hearing shall be conducted in accordance with the procedures described in the foregoing memorandum.

John H. Frye, III,

Administrative Judge.

March 5, 1986.

[FR Doc. 86-5236 Filed 3-10-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24042; 70-7095]

Consolidated Natural Gas Co.; Proposed Issuance of Common Stock for Long-Term Incentive Plan

March 5, 1986.

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a post-effective amendment to its declaration with this Commission pursuant to sections 6(a) and 7, of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

Consolidated proposes to issue, subject to stockholder approval, up to 4,000,000 shares of its common stock, $2.75 par value, or double (pursuant to a stock split) the 2,000,000 shares, $4 par value, authorized for issuance in the Commission's order of June 21, 1985 (HCAR No. 23738) for funding of its Long-Term Incentive Plan.

The post-effective amendment to the declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 31, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended declaration, as filed or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5261 Filed 3-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14968; File No. 812-6240]

Investment Trust of Boston; Renoticing of Application

March 5, 1986.

A second notice is hereby given that on December 6, 1985, a notice (Investment Company Act Release No. 14832) was issued on an application filed on October 30, 1985, by Investment Trust of Boston ("IBT") and Moseley Capital Management Inc. ("MCM"), both at 60 State Street, Boston, Massachusetts 02109; ITB High Income Plus Fund, Inc., ITB—Massachusetts Tax Free Income Fund, and The Empire Builder Tax Free Bond Fund, all at P.O. Box One, 60 State Street, Boston, Massachusetts 02101 (collectively, with ITB, the "Funds"); Warlick & Baker, Inc. ("W&B"), 163 Washington Street, Morristown, New Jersey 07960; and Empire Group, Inc. ("Empire"), 6 East 43rd Street, New York, New York 10017 (the Funds, MCM, W&B and Empire collectively, "Applicants") for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of section 15(a) of the Act to the extent necessary to permit the implementation, without prior shareholder approval, of certain new investment advisory and sub-advisory agreements. On January 29, 1986 Applicants filed an amendment to the application which, in general, concerns certain interim fees to be paid by the Funds for advisory services. All interested persons are referred to the application and amendment on file with the Commission for a statement of the representations contained therein, which are summarized below and in the above release, and to the Act and rules thereunder for the text of the applicable provisions thereof.

Applicants state that each of the Funds is registered under the Act as an open-end, management investment company. Applicants further state that

MCM is registered under the Investment Advisers Act of 1940 and is a wholly-owned subsidiary of Moseley, Hallgarten, Estabrook & Weeden Holding Corporation ("Holding"), whose principal operating subsidiary is Moseley, Hallgarten, Estabrook & Weeden, Inc. ("Moseley"), a New York Stock Exchange member firm. Under the new advisory agreements ("New Advisory Agreements"), MCM acts as investment adviser to ITB and Massachusetts Tax Free Income Fund and, subject to the granting of the relief requested herein, acts as investment adviser to High Income Plus Fund and the Empire Builder Fund, and furnishes a continuing investment program for the Funds and makes investment decisions on their behalf. W&B is also registered under the Investment Advisers Act of 1940, and, subject to the granting of the relief requested herein and at the direction and control of MCM, it may provide certain sub-advisory services to High Income Plus Fund pursuant to the interim sub-advisory arrangement ("Interim Sub-Advisory Arrangement") with MCM. On November 26, 1985, MCM owned 50% of the outstanding voting securities of W&B. Subject to the granting of the relief requested herein, Empire acts as sub-adviser to Empire Builder Fund pursuant to the new Empire sub-advisory agreement ("New Empire Sub-Advisory Agreement") with MCM. On November 26, 1985 Empire was 33⅓% owned by Moseley.

At the October 1985 meetings of the Boards of each of the Funds, the Director or Trustees who are not "interested persons", as that term is defined in the Act, reviewed the performance of MCM, W&B and Empire under the Former Advisory Agreements and the Former Sub-Advisory Agreements (collectively, Former Agreements), and approved new advisory and sub-advisory agreements in anticipation of a sale transaction possibly resulting in an assignment and termination. Thereafter, on December 9, 1985, MCM assumed direct responsibility for providing portfolio management services to High Income Plus Fund, and adopted its Interim Sub-Advisory Arrangement with W&B with respect to that Fund, pursuant to which W&B's modified sub-advisory services will be terminated on February 9, 1986.

On October 4, 1985, Holding and Amwal American Investment Limited ("Amwal") entered into a stock purchase agreement ("Purchase Agreement") pursuant to which Amwal agreed to purchase up to 1,200,000 shares of Series B Preferred Stock ("Preferred Stock") of Holding, resulting in an injection of additional capital for Holding. Amwal has acquired all 1,200,000 shares of Preferred Stock. Until July 31, 1986, each share of Preferred Stock is entitled to five votes and is entitled to vote together with Holding's common stock on all matters submitted to the common stockholders. On or before July 31, 1986, holders of Preferred Stock may convert all, but not less than all, such shares into shares of common stock. The 1,200,000 shares of Preferred Stock owned by Amwal represents approximately 39% of the voting power of all outstanding voting securities of Holding and if converted to common stock, would represent between 33% and 39% of the outstanding common stock. In addition, three representatives of Amwal have been elected to the eleven member Board of Directors of Holding, two of whom have been appointed officers of Holding or its subsidiaries (but not MCM). Thus, completion of the sale transaction under the Purchase Agreement may have resulted in a presumptive change of control of Holding and its subsidiaries and affiliated companies, including MCM, W&B and Empire, as "control" is defined in the Act. In such event, an assignment of each of the Former Advisory Agreements may have occurred under section 2(a)(4) of the Act, according to the application and, if such assignments have occurred, the application states that the Former Agreements would have terminated.

In view of the foregoing, Applicants determined to take the following steps: The Directors or Trustees of each of the Funds considered and approved the applicable New Advisory Agreements and the New Sub-Advisory Agreements, which are identical to the respective Former Agreements (except for modification to change the periods during which the New Agreements are to be in effect), and considered and accepted MCM's Interim Sub-Advisory Arrangement with W&B, which provides that MCM pay W&B a fee for the interim period that is possibly greater than that provided for in its Former Sub-Advisory Agreement. This interim arrangement will involve no additional expense to the Fund.

Applicants state that the shareholders of each of the Funds have been or will be provided with an opportunity, at their next regularly scheduled meeting, to approve the applicable New Advisory Agreements and the New Empire Sub-Advisory Agreement. Each Fund's proxy materials have made or will make clear that shareholder approval of the applicable New Advisory Agreement and the New Empire Sub-Advisory Agreement would result in approval of the terms and conditions thereunder (including the fees to be paid pursuant thereto) over the period from November 26, 1985 until the date of the shareholders meeting. All fees to be paid under each New Advisory Agreement, each of the New Sub-Advisory Agreements, and Interim Sub-Advisory Arrangement will be accrued by the respective Funds and paid only upon shareholder approval of the respective New Advisory Agreements and the New Empire Sub-Advisory Agreement. Until the applicable shareholders meeting, Moseley has undertaken to receive as compensation under each new advisory contract the lower of its costs of providing services thereunder or the fees accrued under the applicable contract. MCM's costs in this respect will include its obligation to pay sub-advisory fees to W&B and Empire; and the fees payable to Empire will not exceed materially its costs of providing services to MCM.

Applicants request relief from the provisions of section 15(a) of the Act so that the Directors or Trustees of each of the Funds may approve, and the Funds may enter into, the respective New Advisory Agreements and New Sub-Advisory Agreements as of November 26, 1985, and Interim Sub-Advisory Arrangements as of December 9, 1985 without shareholder approval prior to or at those times. The New Advisory Agreements and the New Empire Sub-Advisory Agreement will continue until they are approved, disapproved or replaced by alternative arrangements by action of the shareholders of each of the Funds at the next shareholders' meeting. The shareholders of ITB and Massachusetts Tax Free Income Fund have approved the applicable New Advisory Agreement. The next shareholders' meeting of High Income Plus Fund and Empire Builder Fund will be held no later than 240 days after the completion of the sale transaction.

In authorizing the original filing of the application in October 1985, Applicants state that the Directors or Trustees of each of the Funds determined that it was in the best interests of the respective Funds and their shareholders to continue the then-existing relationships with MCM, W&B and Empire after the completion of the sale transaction. Thereafter, on December 9, 1985, MCM assumed direct responsibility for providing portfolio management services to High Income Plus Fund, and adopted its Interim Sub-Advisory Arrangement with W&B with respect to that fund, pursuant to which W&B's modified sub-advisory services

will be terminated on February 9, 1986. Applicants assert that the Directors' or Trustees' determinations as to the advisability of entering into the New Agreements complied with the requirements of section 15(c) of the Act.

MCM and Empire represent that for the period between the completion of the sale transaction and the next shareholders' meetings of each of the Funds (except High Income Plus Fund) there has not been, and with respect to Empire Builder Fund, there will not be any material change from the Former Agreements in the nature or substance of the services provided to the Funds or in the fees charged therefor, or in the persons providing such services or in their supervision. The Funds have been advised that they will not bear any of the costs of the preparation or filing of this application or of the consideration by shareholders of the New Advisory Agreements and New Empire Sub-Advisory Agreement, except to the extent that such costs also relate to the holding of shareholders' meetings for the purpose of obtaining approvals unrelated to the approval of the New Agreements.

For the following reasons, Applicants submit that the exemptions requested are consistent with the standards set forth in section 6(c) of the Act and should be granted: (1) No changes in the management or services rendered will result; (2) Board and shareholder approval will be obtained promptly; (3) the exemption would be consistent with the policies of Rule 15a–4 even though Applicants cannot avail themselves of this Rule; (4) the exemption would avoid certain adverse effects on the Funds not intended by the Act. Applicants submit that the exemption requested is consistent with the public interest and with the interest and protection of investors and the purposes fairly intended by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–5262 Filed 3–10–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14969; File No. 811–4326]

Lehman Institutional Funds Trust; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

March 5, 1986.

Notice is hereby given that Lehman Institutional Funds Trust ("Applicant"), 55 Water Street, New York, New York 10041, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on October 8, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it was established as a business trust under the laws of the Commonwealth of Massachusetts on June 7, 1985. Applicant further states that it filed a registration statement pursuant to section 8(b) of the Act on June 13, 1985; its registration statement did not become effective and the initial public offering of its shares was never commenced. Applicant also states that it does not have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–5263 Filed 3–10–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24043; 70–7202]

New England Electric System et al.; Proposal To Provide Equity Funds to Subsidiary and of Permanent Financing of Construction Expenditures; Exception From Competitive Bidding

March 5, 1986.

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01504, a registered holding company, and its electric utility subsidiary, New England Electric Transmission Corporation ("NEET"), 4 Park Street, Concord, New Hampshire 03301, have filed with this Commission an application-declaration pursuant to sections 6(a), 7, 9, 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 45, 46, and 50(a)(5) thereunder.

By order dated June 10, 1983 (HCAR No. 22971), the Commission authorized NEET to enter into a credit agreement ("Credit Agreement") with a group of banks, providing for up to $120 million for construction, operation, and ownership of certain transmission facilities ("NEET Project") to constitute part of a major transmission interconnection ("Interconnections") between the electric utility systems comprising the New England Power Pool and Hydro-Quebec, the provincial electric utility of the Province of Quebec. NEET's obligations under the Credit Agreement are secured in part by an assignment to the banks of its rights under a Phase I Terminal Facility Support Agreement ("Support Agreement") executed with NEET by the members of the New England Power Pool participating in the Interconnection ("Participants"), including New England Power Company, Inc., the systems generating subsidiary. The Support Agreement obligates each Participant, beginning on the earlier of November 1, 1987, or commercial operation of the NEET Project, to pay to NEET a monthly

support charge equal to that Participant's share of the total cost of service of the NEET Project.

In order to meet its commitment to, among other things, finance the NEET Project, NEET proposes to execute with NEES an Equity Funding Agreement whereby NEES will provide NEET with equity funding not to exceed $20,000,000, through capital contributions or through the purchase of NEET's common stock.

Additionally, NEET proposes to replace the Credit Agreement on the completion of the NEET Project, and fund the total amount of the construction debt, with permanent financing. It is expected that these permanent arrangements will include an infusion of equity by NEES, some form of long-term debt financing, and some short-term debt financing. The total amount of debt financing will range from $70 to $90 million. As in the case of the construction financing, the principal security for the permanent debt financing will be the assignment to the lenders of NEET's rights under the Support Agreement. NEET may also grant a first lien and security interest on the facility to the lenders. NEES and NEET have stated that development of favorable permanent financing arrangements will involve, to an unsual degree, a process of informing and educating lenders concerning NEET's circumstances, and negotiating mutually acceptable terms and conditions for the financing. NEET has requested permission, and is authorized, to commence negotiating the terms and conditions of the permanent financing pursuant to an exception from competitive bidding requirements of Rule 50 (b) and (c). After agreement has been reached on the terms and conditions of the permanent financing documentation of the loan and other arrangements will be provided by amendment to this filing and subject to Commission authorization.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 31, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-5264 Filed 3-10-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/945]

Shipping Coordinating Committee; Subcommittee on the Safety of Life at Sea (SOLAS); Working Group on Lifesaving Appliances 18th Session of the Lifesaving Appliances Subcommittee; Meeting

The Working Group on Lifesaving Appliances, SOLAS Subcommittee of the Shipping Coordination Committee will conduct an open meeting at 10:00 AM on March 18, 1986 in Room 1103 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to finalize preparations for the 18th Session of the Lifesaving Appliances Subcommittee (LSA) of the International Maritime Organization (IMO) which is scheduled for June 23–27, 1986 in London. In particular, the working group will discuss development of U.S. positions dealing with, inter alia, the following topics:

—Clarification and interpretation of 1983 Amendments to the 1974 Safety of Life at Sea Convention (SOLAS).
—Revision of the lifesaving appliance and equipment requirements of Chapter 10 of the Mobile Offshore Drilling Unit (MODU) Code.
—Amendments to the Code of Safety for Special Purpose Ships in respect of survival craft on sail training ships.
—Symbols for emergency and operational purposes on board ships.
—Review of the forms of the Passenger Ship Safety Certificate and the Cargo Ship Safety Equipment Certificate under the harmonized system of survey and certification.
—Review of the lifesaving requirements of other IMO conventions, codes, and recommendations in respect of the 1983 SOLAS Amendments.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Robert Markle, Office of Merchant Marine Safety (G-MVI-3), Room 1404, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. 20593. Telephone: (202) 426-1444. Normal office hours are between 7:30 AM and 4:00 PM, Monday through Friday, except holidays.

Dated: February 20, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86-5207 Filed 3-10-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Application of Air Transport International, Inc.; for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 86-3-12) Docket 43022.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Air Transport International fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections shall do so no later than March 25, 1986; answers to objections shall be filed no later than April 4, 1986.

ADDRESSES: Objections and answers to objections should be filed in Docket 43022 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served upon the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, DC 20590, (202) 426-7631.

Dated: March 4, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-5245 Filed 3-10-86; 8:45 am]

BILLING CODE 4910-62-M

[Order 86-3-17]

Department Findings in Employee Protection Program Cases

AGENCY: Department of Transportation.

ACTION: Notice of order finding major contractions at certificated air carriers (Order 86-3-17).

SUMMARY: The Department of Transportation has found that several airlines experienced major contractions in employment levels during the period from mid-1983 to September 1985. The Department's findings, in eleven cases triggered by employee applications for benefits, update those last made by the Civil Aeronautics Board before its sunset. The Department found that the following carriers experienced major contractions in the stated periods:

(a) Air New England in each of the twenty-one months from January 1982 through September 1983;

(b) Braniff Airways in each of the thirteen months from June 1982 through June 1983;

(c) Pan American World Airways in each of the six months from April 1985 through September 1985;

(d) Republic Airlines in the months of May 1982, December 1984 and February 1985;

(e) Trans World Airlines in the months of January 1983, March 1983, October 1983, November 1983, December 1983, March 1984 and April 1984; and

(f) Western Airlines in each of the five months from November 1984 through March 1985.

The findings are part of the Department's investigations to make threshold determinations regarding assistance for airline employees under the Employee Protection Program, section 43 of the Airline Deregulation Act, 49 U.S.C. 1552.

FOR FURTHER INFORMATION CONTACT: Bernard F. Diederich, Office of General Counsel (C–10, Room 10102), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 472–5580.

SUPPLEMENTARY INFORMATION: The complete text of Order 86–3–17 is available for inspection from our Documentary Services Division at the above address.

Dated: March 5, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–5246 Filed 3–10–86; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Advisory Circular; Static Strength Substantiation of Attachment Points for Occupant Restraint System Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft advisory circular (AC) availability and request for comments.

SUMMARY: This AC provides information and guidance regarding an acceptable means of compliance with Part 23 of the Federal Aviation Regulations (FAR) applicable to static strength substantiation of the attachment points for occupant restraint system installation which have a safety belt and shoulder harness.

DATE: Commenters must identify File AC 23–4X; Subject: Static Strength Substantiation of Attachment Points for Occupant Restraint System Installations, and comments must be received on or before May 12, 1986.

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Joseph W. Burress, Aerospace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374–6941, or FTS 758–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE–110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

Sections 23.785, 23.625(d), and 23.1413 require that the rated strength of safety belts and shoulder harnesses be no less than the loads resulting from applying the ultimate inertia forces specified in § 23.561(b). For small airplanes, amendment 23–32 of § 23.785 requires that each seat be equipped with a safety belt and shoulder harness. Procedures for approving safety belts are provided in TSO–C22f and performance standards for seats with safety belts only are provided in TSO–C39a. However, methods of demonstrating compliance with the installation strength requirements of attachment points for combined safety belt and shoulder harness installations have not been addressed in the Technical Standard Orders (TSOs).

Issued in Kansas City, Missouri, February 25, 1986.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 86–5201 Filed 3–10–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Custom Service

[T.D. 86–58]

Customs Broker's License Revocation by Operation of Law of Customs Broker's License No. 5234

Pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), notice is hereby given that Customs broker's license No. 5234 of Behring International, Inc., is revoked by operation of law.

William von Raab,

Commissioner of Customs.

[FR Doc. 86–5215 Filed 3–10–86; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The Report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act; and Treasury Directive 10–06.E section 12b (9–2–77): A report summarizing the closed meeting activities of the Art Advisory Panel during 1985, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies, at $2.55 each, should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin

Franklin Station, Washington, DC 20044, Telephone (202) 566-3770 (Not a toll free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V:4, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone (202) 566-9259 (Not a toll free telephone number).

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 86-5275 Filed 3-10-86; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

[Delegation Order No. 86-1]

Director, Office of Small and Disadvantaged Business Utilization/ Agency Advocate for Competition

Pursuant to the authority vested in me as Director of the United States Information Agency by Reorganization Plan No. 2 of 1977, Executive Order 12048 of March 27, 1978; Pub. L. 95-507, Section 221, 92 Stat. 1771 (October 24, 1978); Executive Order 12388 of October 14, 1982; and by the Competition in Contracting Act of 1984, Pub. L. 98-369, Title VII, section 2732(a), 98-Stat. 1197 (July 18, 1984), I hereby delegate to the Director, Office of Small and Disadvantaged Business Utilization/ Agency Advocate for Competition the following described authorities:

A. As Director, Office of Small and Disadvantaged Business Utilization—

1. The authority to manage the Office of Small and Disadvantaged Business Utilization established in this Agency by Pub. L. 95-907.

2. The authority to implement and execute the functions and duties of sections 8 and 15 of the Small Business Act (15 U.S.C. 637 and 644).

3. The authority to supervise personnel of this Agency to the extent that the functions and duties of such personnel relate to the functions and duties under sections 8 and 15 of the Small Business Act.

4. The authority to assign a small business technical advisor to each office to which the Small Business Administration has assigned a procurement center representative:

a. Who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the Activity; and

b. Whose principal duty shall be to assist the Small Business Administration procurement center representative in the representative's duties and functions relating to section 8 and 15 of the Small Business Act.

5. The authority to cooperate, and consult on a regular basis, with the Small Business Administration (with respect to carrying out the functions and duties described in paragraph 2 of this section A).

B. As Agency Advocate for Competition, and pursuant to the Office of Federal Procurement Policy Act, 41 U.S.C. 401, *et seq.* (as amended by the Competition in Contracting Act of 1984)—

1. The authority to:

(a) Challenge barriers to and promote full and open competition in the procurement of property and services by the Agency;

(b) Review the procurement activities of the Agency;

(c) Identify and report to the Agency Procurement Executive—

(i) Opportunities and actions taken to achieve full and open competition in the procurement activities of the Agency; and

(ii) Any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the Agency;

(d) Prepare and transmit to the Agency Procurement Executive an annual report describing—

(i) The Advocate's activities under this section;

(ii) New initiatives required to increase competition; and

(iii) Barriers to full and open competition that remain;

(e) Recommend to the Agency Procurement Executive goals and the plans for increasing competition on a fiscal year basis;

(f) Recommend to the Agency Procurement Executive a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs.

(g) Describe other ways in which the Agency has emphasized competition in programs for procurement training and research.

2. The authority to prepare for the Director's review, approval and transmission to each House of Congress an annual report on competition, which report shall include:

(a) A specific description of all actions that the Director of the Agency intends to take during the current fiscal year to—

(i) Increase competition for contracts with the Agency on the basis of cost and other significant factors; and

(ii) Reduce the number and dollar value of noncompetitive contracts entered into by the Agency; and

(b) A summary of the activities and accomplishments of the Agency Advocate for Competition during the preceding fiscal year.

3. The authority to obtain, in coordination with the Bureau of Management, such staff or assistance (e.g., specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns), as may be necessary to carry out the Advocate's duties and responsibilities.

In the discharge of the authority delegated under this Order, the Director, Office of Small and Disadvantaged Business Utilization/Agency Advocate for Competition shall be responsible and shall report directly and without intermediary to the Director of the United States Information Agency.

For administrative support purposes only, the officer to whom these functions have been delegated shall be attached to the office of the Associate Director for Management.

This delegation is effective immediately and supersedes Delegation Order No. 79-1 of June 20, 1979, made to the Director of Small and Disadvantaged Business Utilization.

Dated: February 25, 1986.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 86-5222 Filed 3-10-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 47
Tuesday, March 11, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION

March 6, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 13, 1986, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: *Second Report and Order* In the Matter of Elimination of Unnecessary Broadcast Regulation, MM Docket 83-842. ["Underbrush"] Summary: The Commission will consider whether to eliminate three regulatory policies dealing with Fraudulent Billing, Network Clipping, and Combination Advertising Rates and Joint Sales Practices.

Common Carrier—1—Title: Preemption of State Entry Regulation in the Public Land Mobile Service, CC Docket No. 85-89. Summary: The Commission will consider whether to preempt state regulation that has the effect of prohibiting or impeding the entry of common carriers in the Public Land Mobile Service. The Commission will also consider whether such carriers are nondominant for purposes of Title II regulation and whether forbearance from interstate tariff regulation of such carriers is warranted.

Common Carrier—2—Title: Notice of Proposed Rulemaking, Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies. Summary: The FCC will consider whether to adopt a Notice proposing that the structural separation requirements for the BOC's provision of CPE be eliminated and replaced with certain nonstructural safeguards. The Notice further proposes to preempt state imposed structural separation requirements on the BOCs and the ITSs and to apply similar nonstructural safeguards to BOCs and ITCs presenting similar competitive concerns.

Common Carrier—3—Title: In the Matter of Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers. Summary: The Commission will consider Petitions for Waiver and Reconsideration of the Phase I Order in CC Docket 84-800.

Common Carrier—4—Title: Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 86-1, In the Matter of WATS-Related and Other Amendments of Part 69 of the Commission's Rules. Summary: The Commission will consider whether to adopt a Report and Order implementing certain changes to the Part 69 access charges rules concerned with direct assignment of WATS closed ends, peak/off-peak access pricing, and shifting carrier common line cost recovery to terminating minutes of use.

Mass Media—1—Title: Modification of television licenses and permits and switch of channel reservations pursuant to intraband (UHF-UHF or VHF-VHF) exchange agreements. Summary: The Commission will consider adopting the proposal to amend its Rules to provide for an exchange of channels pursuant to intraband (UHF-UHF or VHF-VHF) exchange agreements between commercial and noncommercial educational television licensees and permittees.

Mass Media—2—Title: Petition for rule making filed by Northwest Indiana Public Broadcasting, Inc., permittee of Channel *50, noncommercial educational television Station WCAE, Gary, Indiana. Summary: The petition requests that the Commission institute a rule making to propose an exchange of noncommercial Channel *50 and commercial Channel 56 (television Station WDAI, Gary, Indiana).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congression, telephone number (202) 254-7674.

Issued: March 6, 1986.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 86-5290 Filed 3-7-86; 11:13 am]
BILLING CODE 6712-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 5, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, March 12, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. § 552b(c)(1)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Local Union 2274, UMWA v. Clinchfield Coal Co., Docket No. VA 83-55-C;
2. Local Union 1889, UMWA v. Westmoreland Coal Company, Docket No. WEVA 81-256-C;
3. Local Union 1609 UMWA v. Greenwich Collieries, Docket No. PENN 84-158-C.

(Issues in these cases involve the interpretation and application of 30 U.S.C. § 821, the compensation provisions of the Mine Act.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5629.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86-5320 Filed 3-7-86; 8:45 am]
BILLING CODE 6735-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, March 18, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first two items to be discussed will be open to the public. The last item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Pipeline Accident Report:* Continental Pipe Line Company, Pipeline Rupture and Fire, Kaycee, Wyoming, July 23, 1985.
2. *Report on Proceedings:* Alcohol/Safety Education Forum.
3. *Opinion and Order:* Administrator v. Curry, Docket SE-6696; disposition of the appeals of each party.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382-6525.

Dated: March 6, 1986.

Catherine T. Keputa,
Federal Register Liaison Officer.

[FR Doc. 86-5265 Filed 3-6-86; 4:16 pm
BILLING CODE 7533-01-M

4

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of March 10, 17, 24, and 31, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 10

Tuesday, March 11

9:30 a.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)
2:00 p.m.
Briefing by DOE on R&D Results from TMI-2 Cleanup (Public Meeting)

Wednesday, March 12

2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7)

Thursday, March 13

10:00 a.m.
Briefing by Staff and Licensee on Status of Kerr-McGee Sequoyah Fuel Facility (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Extension of the Comanche Peak Construction Permit
b. Review of ALAB-823 (In the Matter of Philadelphia Electric Company) (Tentative)
c. Final Rule to Modify General Design Criterion 4 of Appendix A, 10 CFR 50 (Tentative)
d. Review of ALAB-819 (In the Matter of Philadelphia Electric Company) (Tentative)

Friday, March 14

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

Week of March 17—Tentative

Monday, March 17

2:00 p.m.
Continuation of Briefing by TVA on Status, Plans, and Schedules (Public Meeting) (Tentative)

Tuesday, March 18

2:00 p.m.
Briefing by Southern California Edison Co. on San Onofre-1 (Public Meeting)

Wednesday, March 19

10:00 a.m.
Periodic Briefing by Regional Administrators (Public Meeting)
2:00 p.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

Thursday, March 20

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 24—Tentative

Wednesday, March 26

10:00 a.m.
Quarterly Source Term Briefing (Public Meeting)
2:00 p.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 27

10:00 a.m.
Discussion/Possible Vote on Palo Verde-2 Full Power Operating License (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 28

10:00 a.m.
Advisory Committee on Reactor Safeguards (ACRS) Meeting on Safety Goals (Public Meeting) (Tentative)

Week of March 31—Tentative

Wednesday, April 2

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, April 3

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634-1410.

Julia Corrado,
Office of the Secretary.
March 6, 1986.

[FR Doc. 86-5389 Filed 3-7-86; 3:40 pm]
BILLING CODE 7590-01-M

federal register

Tuesday
March 11, 1986

Part II

Office of Personnel Management

5 CFR Parts 293, 300, 335, 430, 431, 451, 531, 532, and 771

Performance Management System; Final Rule

5 CFR Parts 293 and 430

Performance Management System; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293, 300, 335, 430, 431, 451, 531, 532, and 771

Performance Management System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the Performance Management System (PMS). In response to agency requests, the regulations have been updated to make them more consistent with the final regulations recently published for the Performance Management and Recognition System (PMRS), mandated by title II of the Civil Service Retirement Spouse Equity Act of 1984, effective October 1, 1984. Additionally, the regulations modify and streamline the incentive awards program.

Proposed regulations related to some of the provisions of the PMS are being published elsewhere in today's **Federal Register**. The subjects of the proposed regulations are filing and transfer of performance records, establishment of Performance Appraisal Advisory Committees, and funding and payment of performance awards.

DATES: *Effective Date:* April 10, 1986.

Due Date: Performance Management Plans must be submitted to the Office of Personnel Management for review and approval no later than June 9, 1986.

Approval Date: Generally, OPM will review and approve each Performance Management Plan within 90 days after it is received in OPM.

Implementation Dates: Subpart A of Part 430 becomes effective 30 days from the date of publication of these regulations. Each agency's Performance Management Plan and all parts of the regulations become effective no later than 90 days from the date of OPM approval of the Plan. Performance appraisal provisions of the Plan become applicable to each employee at the beginning of the employee's next performance appraisal cycle. (See Issue 62 for clarification of dates for Plan implementation.)

ADDRESS: Send or deliver agency Performance Management Plans to John W. Fossum, Assistant Director for Performance Management, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street NW., Room 7520, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allen B. Levan, (202) 632-5653.

SUPPLEMENTARY INFORMATION: On August 30, 1985, at 50 FR 35505-35506 and 50 FR 35513-35530, OPM issued proposed regulations on the Performance Management System. Those regulations were essentially the same as final rules that were published on October 25, 1983 (48 FR 49472), but did not go into effect until July 3, 1985. The only changes proposed on August 30, 1985, were:

1. A revised schedule for implementing the Performance Management System, reflecting the delay in the effectiveness of the regulations;

2. Removal of the portions dealing with the Merit Pay System that were superseded by the law and regulations implementing the PMRS; and

3. Editorial changes to conform to the PMRS regulations.

The proposed rules were published for a 30-day comment period, which ended September 30, 1985. During that comment period, OPM received comments from 29 agencies, four labor organizations, two members of Congress, one professional association, and one individual commenter. Most of the comments were very detailed, with constructive suggestions for improving the regulations. OPM has carefully reviewed and analyzed the comments, and these final regulations incorporate many of the commenters' suggestions.

Some changes requested by commenters were substantially different from the proposed regulations. OPM agrees that further changes are needed in the PMS, and is proposing changes elsewhere in today's daily issue in the areas of recordkeeping, performance awards, and administration of performance appraisal systems.

Overview of Changes

The overwhelming majority of the commenters suggested, either generally or on specific provisions, that OPM revise the regulations to make them as consistent as possible with PMRS regulations. (Final PMRS regulations were published August 30, 1985, at 50 FR 35488).

OPM agrees that wherever possible the performance appraisal and award systems for employees under the General Schedule (GS), Prevailing Rate System, Senior Executive Service (SES), and PMRS should be as consistent as possible. Congressional intent for performance management has most recently and clearly been demonstrated in the history of the legislation creating the PMRS. Consistency among the systems will foster ease of administration, reduce confusion, and clearly support pay for performance under the performance management umbrella, while at the same time achieving equity among the different systems covering all employees. OPM believes that consistency and equity among these systems can be achieved while meeting all statutory requirements provided for the different groups of employees.

Therefore, except for the proposed regulations noted above, the regulations have been revised to provide as much consistency as possible in appraising and rewarding performance for all employees. Specific changes are outlined in the analyses of comments and changes to the final regulations.

Format Changes

The format of the regulations has been reorganized in several areas, for the ease of the user and to support the concept of pay for performance. Part 430, Performance Management, now contains performance appraisal regulations for all categories of Federal employees, along with performance award regulations for GS and Prevailing Rate employees.

With the placement of SES performance appraisal regulations in Part 430, OPM has removed Part 431 from Title 5, Code of Federal Regulations. With the placement of performance awards provisions in Part 430, the heading for Part 531 reverts to the heading under previous regulations: "Pay Under the General Schedule", and Subpart H in Part 532, covering performance awards for Prevailing Rate employees, is no longer necessary and has been removed.

Incentive Awards regulations, Part 451, are reorganized by separating Presidential Awards from all other incentive awards, now designated as superior accomplishment awards. Productivity Gainsharing regulations, currently under development, will be placed under Part 451, in Subpart C.

Specific Changes

Following is a detailed outline of the changes to the regulations, identifying each issue, a summary of comments, and a discussion of OPM rationale for the changes. The issues are listed in sequential order as they appeared in the proposed regulations, with each "Change" paragraph indicating the new location of the final regulation on the issue.

1. *Issue:* Filing and Transfer of Performance Records (Part 293, Subpart D).

Summary of Comments: Fifteen agencies and one professional organization commented on the proposed regulations requiring the filing and transfer of performance records with employees' Official Personnel Folders (OPF's). Twelve of the agencies suggest that performance records filing systems be the same for all employees as they currently are for PMRS employees; i.e., that agencies be given the option to file performance records for all employees in either the OPF or the Employee Performance File (EPF) system. If only one system must be used, four agencies prefer to use the EPF, while three agencies prefer to use the OPF. Two agencies object to filing duplicate records.

One professional organization objects to the mandatory transfer of performance records, and two agencies prefer not to transfer performance plans (elements and standards) for each of the three ratings of record to be transferred in the OPF. One of those agencies requests that OPM change the section in the EPF subpart on retenion of ratings of record, to require agencies to retain performance plans for only one year, rather than three.

One agency requests clarification of the term "additional performance-related documents" found in the EPF subpart, and two agencies request clarification of the terms "rating" and "rating of record" as they are used in Part 293. One agency requests guidance on implementing the changes in Part 293.

Discussion: OPM agrees that agencies should have the option of filing performance ratings of record and the performance plans on which they are based, in either the OPF or the EPF, provided that the ratings of record for 3 years and the performance plan on which the most recent rating was based are transferred in the OPF when the employee leaves his/her position. Reference to additional performance-related documents may be found in §§ 293.402(b)(1) and 293.403(b), Contents of Employee Performance Files. In response to the suggestion that agencies retain performance plans for only 1 year, the EPF regulations are not changed. They continue to require retention of performance plans for 3 years, because there are other personnel-related purposes for agency use of these performance-related documents. Agencies may file these performance plans in either the OPF or the EPF, as long as they transfer the plan on which the most recent rating was based in the OPF of a transferring employee. To clarify "rating" and "rating of record", agencies may refer to Part 430, Performance Management, in which these definitions have been revised and clarified.

OPM will provide further FPM guidance on filing and transferring performance records. However, beginning on the effective date of these regulations, agencies are required to transfer performance ratings in the OPF's of all employees who are leaving their positions.

Changes: Agencies have the option of filing performance ratings of record and the performance plans on which they are based in either the OPF or the EPF, provided that, whenever an employee changes positions, the agency transfers in the employee's OPF the three ratings of record and the performance plan on which the most recent rating was based. (See also Issue 1 of proposed PMS regulations published elsewhere in today's daily issue.)

2. *Issue:* Time-in-Grade Restrictions (§ 300.602).

Summary of Comments: One agency agrees with the proposed time-in-grade restrictions. One labor organization thinks that § 300.602 should be deleted and adjusted to show that employees can be promoted at any time to a higher grade when they demonstrate that they can perform the work.

Discussion: The 1 year time-in-grade requirement for promotion to positions at GS–6 or above is consistent with the performance requirements for career ladder promotions and the (usually) annual rating cycle for employees. Employees who are considered for career ladder promotions to positions at GS–5 or below must also receive a performance rating to be used as a basis for determining whether they are eligible for a career ladder promotion.

Change: No change.

3. *Issue:* Eligibility for Career-Ladder Promotion (§ 335.104).

Summary of Comments: Two agencies object to priority consideration for career ladder promotions to employees with the highest performance ratings. Reasons given are: the creation of an additional selection procedure, the creation of an additional administrative burden, and logistical problems that would result unless agencies have discretion as to the organizational and geographic areas of consideration to be used. One agency thinks that the section should be amended to permit an agency to give a more current rating at the time that a decision about a career-ladder promotion will be made, consistent with the procedure proposed in § 430.204(m) for within-grade increase decisions. One agency thinks that 5 U.S.C. 4301 *et. seq.* does not authorize OPM to issue regulations with regard to career or within-grade increases.

Two labor organizations object to provisions in § 335.104. Reasons given are that the provisions are contrary to the conditions under which an employee accepts a career ladder promotion, that the provisions replace seniority with competition, that employees rated "Fully Successful" should always be promoted after 1 year, that an exception to the use of merit procedures is given by FPM Chapter 335 for career ladder promotions, and that an employee should not have to compete for his or her own position.

Discussion: An agency may, at its discretion, prepare a more current rating of record at the time that the agency is deciding whether an employee should receive a career-ladder promotion. No employee should receive a career-ladder promotion based on a rating of record which is more than 12 months old. The authorities under which OPM is issuing regulations have been included in both the proposed and in these final regulations.

Change: Paragraph 335.104(b), which required that agencies give priority consideration for career ladder promotions to employees with the highest ratings, has been deleted from the regulations. However, OPM feels it is not appropriate to consider seniority as the only criterion for career ladder promotions. OPM remains committed to the concept that performance in the employee's current and/or past positions is just as significant as seniority, if not more so, in evaluating employees for career ladder and competitive promotions. OPM is studying how this may be done and may issue a regulatory proposal on the linkage between performance ratings and promotions in the future.

To be consistent with changes in terminology in Part 430, paragraph 335.104(a) has been revised by changing the phrase "most recent summary rating" to the phrase "current rating of record", and the "Fully Successful" rating level has been identified as level 3, (see Issue 14 on Names and Definitions of Rating Levels).

4. *Issue:* Purpose of performance appraisal (§ 430.201 and § 430.204(s)).

Summary of Comments: One agency suggests that the word "develop" in § 430.204(s) should be changed to "train" to cover not only enhancement training but also remedial training. One agency prefers a more concise statement of the purpose and use of performance appraisal, such as that found in the PMRS regulations at § 430.402. One labor organization notes that it did not

find methods in the proposed regulations for communicating performance standards to employees on how they will be rated on the accomplishment of organizational goals and objectives.

Discussion: OPM agrees that the word "training" is more appropriate than the word "develop" in this section. The word "training" is used in 5 U.S.C. 4302(a)(3).

Changes: Sections 430.201 and 430.204(s) have been revised to express the purpose of performance appraisal in performance management, consistent with PMRS regulations, and moved to § 430.201(b). The requirement that the results of performance appraisal be used as a basis for "awards" has been changed to "performance awards" and the word "develop" has been changed to "training".

The final regulations also provide that accomplishment of organizational objectives should, when appropriate, be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

Although examples are no longer specifically listed, the requirement to use performance ratings as a basis for adjusting base pay includes within-grade increases, Prevailing Rate employee step increases, and quality step increases. A requirement is added at § 430.204(d)(2) that provides that accomplishment of organizational objectives should, when appropriate, be included in performance plans.

5. *Issue:* Coverage (§ 430.202).

Summary of Comments: One agency thinks that § 430.202 should be modified to exclude all employees under temporary appointments which will not exceed 1 year.

Discussion: OPM does not have the legal authority to exclude positions in the competitive service from performance appraisal requirements. However, agencies may request OPM approval of exclusion of specified excepted service positions from appraisal requirements under the authority of 5 U.S.C. 4301(2)(G). But, since temporary appointments can be extended for longer than 1 year for temporary excepted service positions, exclusion of many of these positions from performance appraisal requirements would not be appropriate.

Change: This section has been revised so that it is consistent with PMRS regulations. A sentence has been added stating that employees covered by the PMRS are not covered by this subpart. The exclusion of Schedule C employees from requirements under this subpart has been deleted, consistent with the provision that Schedule C employees are covered by final performance appraisal regulations for PMRS employees.

6. *Issue:* Progress Reviews (§ 430.203).

Summary of Comments: Three agencies think that a requirement should be added to the regulations for a progress review meeting between employees and their supervisors, consistent with PMRS regulations. Three agencies recommend that "progress reviews" be defined in the regulations. Three agencies recommend that the sentence "This includes oral and written progress reviews" be deleted from the definition of "appraisal" in § 430.203.

Discussion: Since performance appraisal is a process done throughout the year, progress reviews should not be included in the definition of "appraisal". The requirement at 5 U.S.C. 4302(b)(3) for "evaluating each employee during the appraisal period on such standards" supports the concept that at least one progress review discussion should be required during an appraisal period, as is required for PMRS employees.

Changes: The second sentence in the definition of "appraisal," referring to progress reviews, is deleted. Also, a new definition of "progress review" is added, consistent with the PMRS regulations. Finally, § 430.205(e) has been added, consistent with PMRS regulations requiring that a progress review be held for each employee at least once during an appraisal period.

7. *Issue:* Other Definitions (§ 430.203).

Summary of Comments: Five agencies recommend that, wherever possible, the PMS regulations be revised to provide identical definitions in PMS and PMRS appraisal regulations. One agency recommends that all the definitions reflect the same wording as is used in the PMRS regulations. One agency recommends use of the same definitions as in PMRS regulations for the terms "rating", "rating of record", and "summary rating". One agency recommends that definitions of the following terms be added: "Performance Management Plan", "progress review", "summary rating", and "rating of record".

Four agencies ask that the definition of a "non-critical element" be revised to say that non-critical elements are optional and may be used at agency discretion. One congressional comment states that the definitions of the terms "critical element" and "Unacceptable" are vague and circular and offer insufficient guidance.

One labor organization states that in the definition of "critical element", the phrase "of assigned work" is not resistant to abuse and should not be included. One labor organization believes that a requirement for communication of organizational goals and objectives as they are related to a particular position should be included in the definition of "critical element". One labor organization recommends that the definition of "performance standard" be amended to state that standards must be adjusted to provide for full employee participation in the development of performance standards. One labor organization suggests changing the definition of "ratings" to permit negotiation of the number of descriptive levels for various ratings.

Discussion: OPM agrees that the definitions of terms for PMS performance appraisal should be as similar as possible to definitions provided in PMRS regulations. Use of the same definitions will provide greater equity, reduce confusion, and make it easier for everyone to understand and use performance appraisal regulations. (See also Issue 6: "Progress Reviews").

The term "Unacceptable" is not defined in the regulations, but is defined in 5 U.S.C. 4301(3) as performance which fails to meet established performance standards in one or more critical elements of such employee's position. The definition of "critical element" in the final regulations reflects this legal requirement and refers to performance "in the position" instead of performance "of assigned work" as was proposed. The revised language parallels the PMRS definition of "critical element". Although the definition of "critical element" does not require communication of organizational goals and objectives, the final regulations do state that accomplishment of organizational objectives should, when appropriate, be included in performance plans.

Although the definition of "Performance Standard" does not refer to employee participation in establishment of standards, the final regulations do require that each appraisal system encourage employee participation in establishing performance plans. Examples of how this may be accomplished are listed in the regulations. Although five summary rating levels are required by the final regulations, the regulations only require a minimum of three rating levels for each critical element.

Changes: Section 430.203 has been revised as follows, consistent with PMRS regulations. The following words have been deleted from the definition of "appraisal period": "and for which a performance rating will be given". The definition of "critical element" has been revised by changing the word "job" to

"position" and by changing the phrase "of assigned work" to "in the position". The definition of "non-critical element" has been revised by changing the word "job" to "position" and the phrase "appraisal and the assignment of an element rating" has been changed to "written appraisal". In addition, a sentence has been added which provides that non-critical elements are optional and may be used at agency discretion.

The definition of "performance" has been revised by changing the phrase "of assigned duties and responsibilities" to the phrase "of assigned work". A definition of "Performance Management Plan" has been added which corresponds to the same definition in the PMRS regulations. The term "rating" has been changed to "summary rating" and the definition has been revised by changing the phrase "and overall performance" to the phrase "and the assignment of a summary rating level (as specified in § 430.204(g) and (h) of this subpart)." A new definition of "rating of record" has been added, which parallels the definition of the same term in the PMRS regulations, except that it does not include the phrase "including the written notice at any time that an employee's performance is unacceptable on one or more critical elements".

8. *Issue:* Requirement to Establish Appraisal Systems (§ 430.204(a)).

Summary of Comments: One agency thinks that the statutory reference should be to 5 U.S.C. 4302, not 5 U.S.C. 4302(a).

Discussion: 5 U.S.C. 4302(a) referred to paragraph "a" of section 4302, not to § 4302a, which provides for establishment of appraisal systems for PMRS employees.

Change: This section has been revised, consistent with PMRS regulations, by eliminating the phrase "As required by 5 U.S.C. 4302(a)" and by changing the requirement to say that agencies shall "develop one or more performance appraisal systems for employees covered by this subpart" instead of saying that agencies "shall establish one or more appraisal systems for appraising the work performance of employees during an appraisal period".

9. *Issue:* Requirement for Appraisal and Rating Based on Established Performance Plans (§ 430.204(b) and § 430.204(i)).

Summary of Comments: One agency suggests revision of the second sentence of § 430.204(b) to say that an employee's performance must be appraised and rated on each critical element and in comparison to the relevant performance standard. One agency recommends that § 430.204(i) be clarified to provide that, in appraising employees, no consideration extraneous to performance as compared to standards may be given.

Discussion: OPM agrees that performance must be appraised and rated by comparison of actual performance to established performance standards. This requirement was proposed in § 430.204(i). It is also important that, to the extent feasible, individual performance plans reflect each employee's expected contribution to the accomplishment of established organizational objectives. In order for performance plans to be utilized as expected, they must be provided to employees as near to the beginning of established appraisal periods as possible.

Changes: Section 430.204(b), except for the last sentence, has been revised by adding the phrase "Under each appraisal system" and by deleting the words "and rated" from the second sentence. However, the requirement for appraisal on each element has been added under requirements for ratings in § 430.206(b). The requirement for appraisal on each element is also repeated in § 430.205(c), consistent with PMRS regulations.

Also, consistent with PMRS regulations, the first sentence of § 430.204(i) has been moved to § 430.204(d)(1), and revised slightly by adding that elements as well as standards must be based on requirements of employees' positions. Another revision states that performance plans must normally be provided to employees within 30 days after the beginning of each appraisal period. Finally, a new § 430.204(d)(2) has been added consistent with PMRS regulations providing that when appropriate, accomplishment of organizational objectives should be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

10. *Issue:* Sub-elements (§ 430.204(b)).

Summary of Comments: Two agencies recommend deletion of the restriction on rating sub-elements, as was done in the final PMRS regulations. One agency thinks that agencies should be able to rate sub-elements. One labor organization states that MSPB decisions provide for balancing the rating on one component of an element against the ratings on other components of an element.

Discussion: The restriction on rating sub-elements was intended to discourage agencies from defining elements very narrowly and from defining numerous elements. However, in an effort to parallel PMRS regulations and provide agencies with flexibility in this area, the restriction on sub-elements was re-examined.

Change: The last sentence of § 430.204(b), prohibiting assignment of ratings to sub-elements, has been deleted.

11. *Issue:* Pass/fail Elements (§ 430.204(c)).

Summary of Comments: Two agencies cite an MSPS decision that states that pass/fail elements are properly used in cases where failure to meet the standard would result in death, injury, breach of security, or monetary loss. One agency recommends that the regulation discourage, rather than prohibit, pass/fail elements. One agency thinks that OPM should permit pass/fail non-critical elements.

Discussion: In *Callaway* v. *Department of the Army*, 23 M.S.P.B. 592 (1984), the Merit Systems Protection Board ruled that absolute performance standards may be compelled in certain circumstances. It should be noted that a pass/fail or absolute standard is not the same as a pass/fail element. It is evident that the restriction on pass/fail elements has been misinterpreted and has caused confusion.

Change: The last sentence of § 430.204(c), which prohibited use of pass/fail elements, has been deleted.

12. *Issue:* Number of Rating Levels for Individual Elements and Levels for Which Written Standards are Required (§ 430.204(c)).

Summary of Comments: One agency and two labor organizations think that the absence of performance standards for a rating level should negate a rating at that level. One labor organization believes that a rating should not be permitted unless standards are written at one contiguous rating level, citing FPM Letter 430–4, Statutory Requirement Concerning Use of Single and Multiple Performance Standards Under Non-SES Performance Appraisal Systems. One labor organization states that if there is only one critical element and three element rating levels, it is not possible to derive five summary rating levels, and recommends that there be an equal number of element and summary rating levels. One agency opposes a requirement for performance standards at the Fully Successful rating level, and states that such a requirement would be costly and would take time to implement.

Discussion: It is very time-consuming and costly for agencies to prepare performance standards at several rating levels. Most employees are likely to

meet the "Fully Successful" standards and, for them, additional standards are not useful of needed. Each employee should be told what the requirements are for "Fully Successful" performance. If they have not already been provided, performance standards which indicate minimum performance requirements for retention must be given to those few employees whose performance is determined to be "Unacceptable", to meet legal requirements. Also, agencies are encouraged to write standards at more than one level to clarify performance requirements. However, due to cost or time considerations, this may not always be possible and, therefore, is not required. To avoid unnecessary confusion, guidance will be issued to provide additional interpretation on the subject of multiple standards.

Concerning the use of one element having only three rating levels, it would be unusual to have only one performance element since this would probably not reflect all the duties of the employee's position. However, if it did occur, undoubtedly the (required) rating levels would equate to "Unacceptable", "Fully Successful" and "Outstanding", which could then equate to the same summary rating levels.

Changes: This language has been moved to § 430.204(e). The only change is that the paragraph provides that in addition to the "Fully Successful" level, performance standards for all critical and non-critical elements may be written at other levels, which had previously only been implied. In addition, consistent with the PMRS regulations, new language at § 430.204(j)(2) provides that at the time that an agency identifies critical element(s) for which performance is "Unacceptable", an employee must be informed of the performance standards that must be reached in order to be retained.

13. *Issue:* Rules or Procedures for Deriving Summary Ratings (§ 430.204(d)).

Summary of Comments: Two agencies think that the requirement to use decision tables for deriving summary ratings is unduly restrictive and might preclude use of numerical procedures or narrative rules for deriving summary ratings. One agency suggests that the requirement for deriving summary ratings should be the same as stated in the final PMRS regulations. One agency objects to the statement that an "Unacceptable" rating on one critical element must result in an "Unacceptable" summary rating, citing 5 U.S.C. 4303(a).

Discussion: Although 5 U.S.C. 4303(a) states that an employee may be reduced in grade or removed for unacceptable performance, 5 U.S.C. 4302(b)(6) states that appraisal systems shall provide for reassigning, reducing in grade, or removing employees who continue to have unacceptable performance. Unacceptable performance is defined in 5 U.S.C. 4301(3) as failure to meet performance standards in one or more critical elements of the employee's position.

The use of the phrase "decision tables" was not intended to preclude use of numerical procedures or narrative rules for deriving summary performance ratings from ratings on elements.

Changes: The language in § 430.204(d)(1) has been revised, consistent with the final PMRS regulations, and moved to § 430.204(g). Each appraisal system must describe the method to be used by the agency to derive summary ratings. The method must show that more weight will be given to critical elements than to non-critical elements.

Also, consistent with PMRS regulations, § 430.204(d)(2) has been revised and included in the definition of a "critical element" in § 430.203, indicating that a critical element is so important that unacceptable performance on the element would result in unacceptable performance in the position.

14. *Issue:* Names and Definitions of Rating Levels (§ 430.204 (d) and (h)).

Summary of Comments: Eight agencies recommend that the definitions of the rating levels be deleted, and that language be adopted which was used to describe summary rating levels in the final PMRS regulations. One agency thinks that the definitions did not appear to permit numerical procedures for deriving summary ratings from ratings on performance elements. One labor organization states that the definitions required peer comparisons and are illegal. One agency thinks that the definitions are ambiguous. Seven agencies request more flexibility in naming their rating levels. Five agencies suggest that names of rating levels should be consistent with those for PMRS employees.

Discussion: The definitions of rating levels were intended to indicate the level of difficulty of each rating level. They were not intended to be used to derive summary ratings from ratings on performance elements. They also were not intended to encourage peer comparison as opposed to comparison of an employee's actual performance to established performance standards. Each agency is encouraged to establish generic descriptions of the level of difficulty of each rating level as a guide for employees, supervisors, and approving officials for establishing performance requirements.

Change: Consistent with the final PMRS regulations, the definitions of the five rating levels have been deleted. Instead, § 430.204(h) provides for five summary rating levels and identifies them as levels 1 through 5 (with only the "Fully Successful" and "Unacceptable" levels described by adjective names).

15. *Issue:* Performance Improvement Plan (PIP) [§ 430.204(e)].

Summary of Comments: Seventeen agencies comment that the PIP provisions should be deleted from the PMS regulations. One reason given by all of these agencies is to achieve consistency with the PMRS regulations, where the PIP requirement was deleted. Other reasons for deleting the PIP included: The PIP will delay corrective actions by triggering a new appraisal period; the PIP will discourage managers from taking corrective actions; the PIP has been made unnecessary by MSPB decisions; requiring that assistance be provided to employees is a more constructive approach; the PIP is redundant with 5 CFR Part 432 procedures; and the PIP is confusing, burdensome, and requires unnecessary paperwork. One agency questions the applicability of the PIP requirements.

Discussion: It is evident from the many comments received that the PIP was viewed as redundant with the requirement to provide an opportunity to demonstrate acceptable performance. As stated above, OPM agrees that there should be parallelism with the PMRS regulations. Also the guidance provided in FPM Letter 430–4, which strongly contributed to the rationale behind the PIP, is being clarified, making the PIP unnecessary.

Change: The requirement for the PIP is removed from the regulations and its objective is met by the addition, at § 430.204(j)(2), of the requirement that an employee be informed of the performance standard necessary for retention in the position at the time that an agency identifies the critical element(s) for which performance is "Unacceptable". This change provides the same concept in a more streamlined, clearer manner, and fully takes into consideration the requirements of 5 U.S.C. 4302(b)(6). The new language is also more consistent with the PMRS regulations.

Also, consistent with the PMRS regulations, a provision has been added at § 430.204(i) that agencies must assist

employees in improving performance rated below the "Fully Successful" level.

16. *Issue:* Written Justification for an "Outstanding" Summary Rating (§ 430.204(f)).

Summary of Comments: Two agencies think that a well documented rating is sufficient justification for an Outstanding summary rating. One agency states that this requirement creates unnecessary and duplicative paperwork. One agency suggests that this requirement should be deleted, consistent with PMRS regulations. One agency states that this requirement is inconsistent with the guidance in FPM Letter 430–4.

Discussion: OPM agrees that a well-documented performance rating is sufficient justification for an "Outstanding" rating. Agencies may prepare performance standards above the "Fully Successful" level at their discretion. To avoid unnecessary confusion, the guidance provided in FPM Letter 430–4 is being clarified.

Change: Paragraph 430.204(f) is deleted, consistent with the PMRS regulations.

17. *Issue:* Pre-established Distributions of Ratings (§ 430.204(g)).

Summary of Comments: One agency suggests revising this paragraph so that it is consistent with language in the PMRS regulations. One agency suggests that this paragraph should also state that ratings cannot depend on the rating received by the employee's supervisor.

Discussion: The language of this paragraph was clarified when final PMRS regulations were prepared. OPM agrees that the same language should be used here. This prohibition may be interpreted to prohibit ratings based on the rating given to an employee's supervisor.

Change: This language has been moved to § 430.206(d) and has been revised, consistent with the PMRS regulations, to prohibit an agency from prescribing a distribution of ratings for employees.

18. *Issue:* Higher Level Review (§ 430.204(g), (n) and (o)).

Summary of Comments: Two agencies recommend that higher level review be limited to the highest local agency official. One agency suggests adding the phrase "unless there is no higher official in the agency" to the requirement for approval of performance plans. One agency thinks that higher level review of personnel decisions presents serious procedural difficulties. One agency suggests that there should be no requirement for approval of periodic (interim) ratings. One agency says that higher level review adds paperwork, adds a level to the grievance process, and conveys little faith in supervisors. One agency suggests that the language on higher level review in § 430.204(g) be revised consistent with the final PMRS regulations. One agency says that approval of a within-grade increase (WGI) decision is pointless once a performance rating has received higher level approval.

Two agencies and one labor organization object to an outright prohibition of discussion of a summary rating with an employee before it is approved. One labor organization states that restricting communication prior to approval of a rating violates the Privacy Act. Two agencies recommend that language on communication of ratings be revised consistent with the final PMRS regulations.

Discussion: Higher level approval ensures that supervisors are accurately appraising employee performance and using the results appropriately as a basis for personnel decisions. Higher level approval also ensures that higher level officials get involved with performance planning and assessment, so that organizational objectives may be achieved. Higher level approval is essential to productivity improvement, accountability, and pay-for-performance objectives. However, in the review of performance plans, OPM recognizes that certain unique situations might make it difficult or not feasible to carry out this requirement, e.g., lack of knowledge of the work by a higher level reviewer at a distant geographical location. Therefore, OPM feels that some flexibility is warranted in this situation.

Changes: Consistent with PMRS regulations, § 430.206(d) provides that agencies are to establish procedures to ensure that only employees whose performance exceeds normal expectations are rated above "Fully Successful." The procedures must be described in agency Performance Management Plans.

Section 430.204(n) has been moved to § 430.204(f). The section has been revised by using the phrase "performance plans" and by indicating that approval must occur at the beginning of the appraisal period, consistent with final PMRS regulations. To allow agencies some flexibility in accounting for unique situations which would make this provision difficult to accomplish, language has been provided to allow agencies to describe exceptions to higher level review and approval of performance plans in their Performance Management Plans, subject to OPM approval.

Section 430.204(o) has been moved to § 430.206(c). To reflect changes in terminology elsewhere in Part 430, this section has been revised to refer to ratings of record instead of periodic ratings. Consistent with final PMRS regulations, the section now states that higher level review does not preclude communication about appraisal of performance between a supervisor and an employee. Also consistent with PMRS regulations, language has been added requiring approval of ratings of record by official(s) with responsibility for managing the performance awards budget within the agency. In addition, language has been added which provides that agencies may describe exceptions to higher level approval of ratings of record and performance-based personnel actions in their Performance Management Plans, subject to approval by OPM.

19. *Issue:* Employee Participation (§ 430.204(i)).

Summary of Comments: One agency thinks that the requirement to encourage employee participation in establishing performance plans should not be changed to require joint participation. Two agencies suggest adding a sentence providing that supervisors have the final decision on the content of performance plans. A congressional comment states that the regulations should guarantee that workers have the opportunity to discuss and agree on the critical elements of a position.

Discussion: 5 U.S.C. 4302(a)(2) requires that employee participation be encouraged in establishing performance standards for GS and Prevailing Rate employees, while 5 U.S.C. 4302a(a)(2) requires the joint participation of the supervising official and the PMRS employee in developing performance standards, with authority for establishing standards resting with the supervising official.

Change: The requirement for employee participation has been moved to § 430.204(c), and has been revised to require employee participation in establishment of performance plans, not just standards, consistent with PMRS regulations. Also, consistent with PMRS regulations, language has been added to provide examples of how employee participation may be accomplished and to clarify that final authority for establishing performance plans rests with supervising officials.

20. Issue: Basis for Performance Standards (§ 430.204(j)).

Summary of Comments: Two agencies suggest that this paragraph should be revised to indicate that elements and standards should be consistent with employees' position descriptions, as well as related to their assigned work.

Discussion: Performance management systems cannot work unless performance elements and standards reflect duties and responsibilities actually performed by the employee. While position descriptions must be kept up to date and must be accurate, the overriding consideration is that performance plans and ratings reflect the employee's actual work assignments.

Change: The requirement in § 430.204(j) that performance plans be related to employees' "assigned work" has been revised, consistent with PMRS regulations, to say that performance elements and standards must be based on requirements of the employees' "positions". This requirement has been moved to § 430.204(d)(1).

21. *Issue:* Consideration of Ratings from an Entire Appraisal Period (§ 430.204(k)).

Summary of Comments: One agency recommends a modification to permit consideration of an "interim" rating, prepared when an employee transfers, when preparing an annual rating. One agency thinks that consideration should be given to all ratings prepared during an appraisal period when arriving at an annual rating, consistent with PMRS regulations. A congressional comment states that appraisals should be performed throughout the period of employment and not just once a year.

Discussion: OPM agrees that a rating should be prepared for all periods of employment equal to or exceeding the agency's minimum appraisal period, and should be considered in preparing the employee's (usually annual) rating of record.

Change: The first and second sentences of this section have been moved to § 430.205(a) where they more appropriately fit the description of an appraisal period. The third sentence, concerning the derivation of the rating of record from ratings during the year, has been incorporated into the last sentence of § 430.205(a). Consistent with PMRS regulations, the requirement now specifies that an employee must be given a summary rating when he or she changes positions during the appraisal period and that the rating must be taken into consideration in deriving the employee's next rating of record. In addition, § 430.206(a) has been added, consistent with PMRS regulations, requiring that a written rating of record be given to each employee as soon as practicable after the end of the appraisal period.

22. *Issue:* Ratings to be Used in Reduction-In-Force (RIF) Procedures (§ 430.204(l)).

Summary of Comments: Three agencies oppose giving a special rating just before a RIF. One agency suggests requiring extension of appraisal periods, consistent with § 430.407(f) of the PMRS regulations. One agency asks if a new rating must be prepared if an employee's rating of record is not an annual rating. One agency recommends that the language of this section be consistent with § 351.504(d) of the RIF regulations. One agency recommends deleting this section. One agency requests clarification of the rating to be used for RIF if the employee has not served for the minimum appraisal period.

Discussion: Requirements on providing credit for performance in reduction-in-force procedures are found in the reduction-in-force regulations, 5 CFR Part 351. It is necessary for agencies to prepare performance ratings for employees each year, so that the ratings will be available and can be used for RIF and for other performance-based determinations. This standard procedure usually precludes a need for special-purpose ratings prepared for a specific personnel action.

Change: Section 430.204(1) has been deleted from the regulations. Section 430.206(e) has been added, consistent with PMRS regulations, providing that, if a rating of record cannot be prepared at the time specified in the plan, the employee's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period, at which time a rating of record shall be prepared.

23. *Issue:* Minimum Appraisal Period and Determining the Rating of Record (§ 430.204(m)).

Summary of Comments: One agency notes that a 90-day minimum appraisal period is not consistent with the requirement in the PMRS regulations that written performance plans be provided to employees normally within 30 days after the beginning of an appraisal period. One agency recommends a minimum appraisal period of 60 to 90 days. Two agencies recommend a minimum appraisal period of 90 to 120 days.

Three agencies think that the second sentence of § 430.204(m) was not clear. One agency recommends that the sentence be deleted or revised. One agency asks how ratings for newly appointed and transferred employees are to be determined. One agency objects to permitting only annual ratings to be used, except where another type of rating is specifically permitted by law or regulation.

Discussion: Agencies commonly have either a 90-day or a 120-day minimum appraisal period. This refers to the amount of time that an employee has served under an approved performance plan which has been communicated to him or her.

It is recognized that agencies will not always be able to wait 12 months before preparing a rating of record. However, they must wait at least until after the minimum appraisal period. Also, the minimum appraisal period is intended to ensure that agencies are able to determine ratings for newly appointed and transferred employees in the same manner as for PMRS employees.

Change: The first sentence of § 430.204(m) has been revised and moved to § 430.205(b). Consistent with PMRS regulations, the paragraph now provides that agency appraisal systems establish a minimum appraisal period of at least 90 days but not more than 120 days.

The second sentence of § 430.204(m) has been deleted. In place of that sentence, language parallel to PMRS regulations has been provided at § 430.205(a) and § 430.206 (e) and (f). These paragraphs specify how a rating of record will be determined when one cannot be prepared at the (usually annual) time specified in the agency plan, when an employee is transferred, and when an employee changes positions during an appraisal period.

24. *Issue:* Performance Rating for a Within-Grade Increase (§ 430.204 (m)).

Summary of Comments: Five agencies prefer to prepare a justification or supplementary statement when a within-grade increase decision is not consistent with an employee's most recent rating of record. These agencies object to the requirement for preparing a more current rating of record which supports the decision. One agency states that the preparation of a more current rating is duplicative of the notice of determination requirement in 5 CFR 531.409(e).

Discussion: Consistent with the requirement for use of a rating of record as the basis for all performance pay decisions for PMRS employees, a rating of record is to be used as a basis for within-grade increase (WGI) determinations for GS employees. Therefore, use of a written justification, which is contrary to the employee's rating of record, as a basis for within-grade increase determinations, would be inconsistent with pay-for-performance principles.

The notice of determination requirement of § 531.409(e) is not duplicative of providing a rating of employee performance because the employee is specifically informed whether his or her performance meets

performance requirements for a within-grade increase and notifies an employee whose within-grade increase is denied of how performance must improve and of his or her right to request reconsideration of the determination.

Change: The third sentence of § 430.204(m) has been revised slightly and moved to § 531.404(a)(1), covering WGI determinations. The requirement now provides that when a within-grade increase decision is not consistent with the employee's most recent rating of record, a more current rating of record must be prepared.

25. *Issue:* Reconsideration of a Performance Rating (§ 430.204(p) and § 771.206(c)(3)).

Summary of Comments: Two agencies suggest that reconsideration and grievance language should be consistent with PMRS regulations. One agency thinks that there should be only one procedure for review of performance ratings. One agency states that the agency grievance procedure should be the only procedure available for review of ratings for both PMRS and PMS employees. One agency asked if reconsideration of ratings can be under either the administrative or negotiated grievance procedures. Two labor organizations state that ratings are subject to review under negotiated grievance procedures. One labor organization says that ratings are also subject to review by the MSPB Special Counsel. A congressional comment states that appeal of a rating should be a level above the supervisor who issued the appraisal.

Discussion: While a reconsideration procedure for an appraisal is required by 5 U.S.C. 4302a(c)(2) for PMRS employees, no parallel requirement is found in 5 U.S.C. 4302 for GS and Prevailing Rate employees. Furthermore, it is evident that this process is confusing and could easily duplicate the function of the agency grievance procedure, and/or the "additional procedures established at the discretion of the agency head" specified in the last sentence of § 430.204(p).

Change: Section 430.204(p) has been deleted. Section 771.206(c)(3), which provided agency discretion to exclude performance ratings from the agency administrative grievance procedure, has also been deleted.

26. *Issue:* Appraisals and Ratings for Details and Temporary Promotions (§ 430.204 (q) and (r)).

Summary of Comments: One agency recommends a clarification that a rating for a detail or temporary promotion must be considered in preparing an annual rating. One agency thinks that paragraph (q) should not refer to a 120-day period, but rather to a minimum appraisal period or longer established by the agency. One agency recommends a definition of "rating of record" similar to that in the PMRS regulations to help clarify the nature of ratings for details and temporary promotions. One labor organization thinks that it is unfair to rate an employee's performance in a job other than the one for which he/she was hired.

One agency states that paragraph (r) should be rewritten to conform with § 430.406(d) in the PMRS regulations. One agency states that it does not appear to be necessary to extend an employee's rating because there are no pay deadlines for GS and Prevailing Rate employees. One agency says that paragraphs 430.204 (r)(2) and (r)(3) should have broader application than to details or temporary promotions and recommends that a supervisor have discretion to extend the last rating or use a "presumptive" rating. One agency points out that a reference to § 531.409(d) should be to § 531.408(d). One agency suggests that paragraph (r) be revised to provide for extending the rating period and, if that is not feasible, to provide for extending the rating of record.

Discussion: An employee's performance throughout an entire appraisal period should be considered when preparing the employee's (usually annual) rating of record. This includes periods of time when an employee is detailed or temporarily promoted to another position. Note, however, that performance-based reductions-in-grade and removals must be based on the critical element(s) of the employee's position (5 U.S.C. 4303(b)).

Change: Section 430.206(e) now provides that an employee's appraisal period must be extended if a rating of record cannot be prepared at the time specified in the agency's Performance Management Plan. Section 430.205(d)(1) now provides the same requirements for employees detailed or temporarily promoted within the same agency as were proposed in § 430.204(q), except that the phrase "annual summary rating" has been changed to "rating of record." Section 430.205(d)(2) provides revised requirements for employees detailed outside the agency using the same language as is applicable for PMRS employees. The section revises § 430.204(r) and provides for making a reasonable effort to obtain appraisal information from an outside organization, which must be considered in deriving the employee's next rating of record.

27. *Issue:* Recommendation for Recognition of Outstanding Employees (§ 430.204(t)).

Summary of Comments: Two agencies object to requiring monetary recognition for "Outstanding" employees. One agency objects to mandatory awards for outstanding employees, stating that career ladder promotions provide adequate recognition for outstanding performance. One agency notes that it is not always appropriate to recognize "Outstanding" employees, such as when an employee has disciplinary problems. Two agencies oppose requiring a recommendation for awards, citing the extra paperwork required. They feel that performance ratings should be sufficient justification for performance awards.

One agency thinks that agencies should be required to recognize "Outstanding" employees through monetary, non-monetary or honorary awards. One agency states that cash awards should be mandated for PMS employees rated Outstanding, consistent with PMRS regulations.

Discussion: See also agency comments and final regulations on performance awards. OPM agrees that performance awards should be based on performance ratings and that additional justification is not necessary where an employee has received a properly documented "Outstanding" performance rating.

Change: Section 430.204(t), which required a recommendation for appropriate recognition of "Outstanding" employees, has been deleted.

28. *Issue:* Performance Ratings of Disabled Veterans (§ 430.204(u)).

Summary of Comments: None.

Change: Consistent with PMRS regulations, this section has been slightly revised to refer to "the performance appraisal and resulting rating" of a disabled veteran. The section has also been moved to § 430.205(i).

29. *Issue:* Training and Evaluation (§ 430.205).

Summary of Comments: None.

Change: Consistent with PMRS regulations, this section has been slightly revised to say that the purpose of training and evaluation is to "assure that the requirements of law will be effectively implemented". In addition, the results of evaluations must be used to "implement improvements as needed" instead of "to improve the systems". This section has been moved to § 430.208.

30. *Issue:* OPM Review of Appraisal Systems (§ 430.206).

Summary of Comments: One agency thinks that agencies rather than OPM should be responsible for reviewing appraisal systems for their "contribution to agency effectiveness and efficiency".

Discussion: While OPM agrees that this review cannot fully assess the contribution of an appraisal system to agency effectiveness and efficiency, the review should include an assessment of conformance of systems with FPM guidance.

Change: Consistent with PMRS regulations, this section has been revised by deleting the requirement for OPM review of appraisal systems "with respect to their contribution to agency effectiveness and efficiency". Language has been added stating that OPM will review appraisal systems to determine conformance with "OPM performance management policy". This section has been moved to § 430.209. Also, § 430.210 has been added which provides that agencies must submit performance appraisal plans to OPM for approval as part of agency Performance Management Plans in accordance with Subpart A of Part 430 and provisions of Subpart B.

31. *Issue:* OPM Review and Approval of Performance Management Plans (§§ 430.207 and 431.207).

Summary of Comments: Four agencies comment on the provisions for OPM review and approval of agency performance management plans. Two agencies suggest that, to save them time and paperwork in initial implementation, OPM should review agencies' performance management plans after the plans are in operation. One of these agencies thinks this post-implementation review would assist in defending the plan before third-party agencies. One agency thinks the provision for OPM review and approval is unnecessary, but requests final regulations and guidance as soon as possible if the provision is retained. One agency objects to submitting the results of its performance management system operations to OPM, i.e., previous years' and projected expenditures.

One labor organization comments that the demonstration projects proposed at § 430.207(d) would not include an expanded scope of bargaining and therefore provide little chance to test private sector principles in Government. The labor organization also states that some of the ideas in the proposed regulations could be tested in a demonstration project and refined before possible implementation Government-wide.

Discussion: OPM is required by statute (5 U.S.C. 4304(b)(1) to "review each performance appraisal system developed by any agency . . . and determine whether the performance appraisal system meets the requirements" of the law. Those legal requirements include the linkage of performance appraisal results to "recognizing and rewarding employees" (5 U.S.C. 4302(b)(4)) and other personnel actions. To assist agencies in managing their employees' performance to accomplish agency missions, OPM has established the Performance Management System, integrating all performance-related actions. To meet the requirement to review agency systems for legal compliance, OPM must review the plans prior to their implementation, because so many consequences result from performance appraisal results. Further, OPM will need reports of the results of performance management plan operations to evaluate accurately the operation of the performance management system.

OPM believes these performance appraisal regulations should not include requirements on demonstration projects authorized by 5 U.S.C. 4703. OPM has previously issued regulations for demonstration projects at 5 CFR Part 470.

Change: Only editorial changes have been made to the regulations on OPM review and approval of performance management plans. To support and clarify the concept of performance management, these requirements have been placed in the new Subpart A of Part 430. Subpart A also assists agencies by consolidating agency performance management responsibilities in one place in the regulations. Section 430.207(d), on demonstration projects, has been deleted.

32. *Issue:* Conversion of a Position to Another Pay System.

Summary of Comments: One agency suggests adding a provision that ratings of employees whose positions are converted from a Prevailing Rate pay system to the GS may be used as a basis for performance-related personnel decisions under the GS, provided that both positions have the same duties and responsibilities. A similar provision is recommended when positions are converted from the GS to a Prevailing Rate Pay system.

Discussion: OPM agrees that, prior to the time when a new performance rating will be prepared after the conversion of a position to a new pay system, a performance rating prepared for an employee performing the same duties and responsibilities should continue to be used.

Change: A new § 430.204(k) has been added, consistent with § 430.405(k) of the PMRS regulations, which provides that when an employee's position under any Federal pay system is converted to a pay system covered by Subpart B of 5 CFR Part 430, the employee's rating of record will be considered to have been derived under 5 U.S.C. 4302 and from the position which the employee now occupies.

33. *Issue:* Procedure When Employee's Performance is Unacceptable.

Summary of comments: Six agencies state the performance appraisal provisions of the PMRS and the PMS should be similar, wherever possible. One agency states that PMRS and PMS performance appraisal provisions on treatment of employees rated below "Fully Successful" should be consistent to the extent feasible. Also, see agency comments and regulation changes under issue 15, "Performance Improvement Plans".

Discussion: Legal requirements are somewhat different for PMRS employees than for PMS employees when performance on one or more critical elements is unacceptable. Section 4302a(b)(6) of title 5 U.S.C. provides that PMRS employees must receive a written notice of an "Unacceptable" rating before an opportunity to raise the employee's performance to the "Fully Successful" level is provided. On the other hand, 5 U.S.C. 4302(b)(6) does not require that a PMS employee receive a rating before being provided an opportunity to demonstrate acceptable performance nor, for that matter, at the end of an opportunity period.

Instead, an agency should provide a written notice to an employee at the beginning of an opportunity period which identifies critical element(s) for which performance is unacceptable and identifies performance standards which must be reached in order for the employeee to be retained in the position. Such a notice and an agency's determination about the level of an employee's performance at the end of an opportunity period are part of an agency determination that will be appealable to the Merit Systems Protection Board should the employee subsequently be reduced in grade or removed for unacceptable performance. The agency decision must be reviewed and approved as required by § 430.206(c) before the decision is final and subject to appeal.

Under PMRS regulations, if an employee's performance improves to level 2, but not to the "Fully Successful" level, an additional opportunity to demonstrate performance at the "Fully Successful" level is required. The difference in legal requirements does not

necessitate an additional opportunity period for PMS employees. However, § 430.204(i) requires that agencies assist employees in improving performance rated below the "Fully Successful" level.

Change: A new § 430.204(j) has been added which is consistent with § 430.405(j) of the PMRS regulations except where differences in legal requirements are reflected as discussed above.

34. *Issue:* General Comments on Performance Appraisal for the Senior Executive Service (Part 431).

Summary of Comments: Five agencies support revising the SES performance appraisal regulations to make them as parallel as possible with performance appraisal provisions of the PMRS. Two agencies object to making parallels with PMRS.

Discussion: As indicated above in the "Overview" section, OPM agrees that wherever possible there should be consistency among the performance appraisal provisions for the SES, PMRS, GS, and Prevailing Rate Systems. This will foster ease of administration, reduce confusion, and clearly support an equitable pay-for-performance system. OPM believes that consistency and equity can be achieved while preserving congressional intent as reflected in statutory differences between the Senior Executive Service and the other systems.

Change: The provisions for Senior Executive Performance Appraisal are moved from Part 431 to Part 430, Subpart C and revised to provide for as much consistency as possible among performance appraisal systems for employees covered by the PMRS, SES, GS and Prevailing Rate Systems.

35. *Issue:* Definitions (§ 431.203).

Summary of Comments: Two agencies think that all definitions should be consistent with those in the PMRS. Three agencies request that "appraisal" be defined, as in the PMRS regulations, deleting reference to progress reviews; one requests that OPM add a separate definition of "progress review" as defined in PMRS regulations; two agencies suggest defining "critical element" as it is in PMRS; and one agency suggests revising the definition of "non-critical element", to indicate that these elements are optional. Two agencies request clarification of "rating official"; and one agency recommends revision of the definition of "performance".

Discussion: OPM agrees that wherever possible definitions should be consistent among performance appraisal systems except where definitions specific to the SES are provided in statute.

Change: Definitions are now contained in § 430.303 and have been revised to the extent possible to be consistent with the PMRS and the PMS (see discussion of progress reviews in Issue 6).

36. *Issue:* Use of Critical Elements, Non-critical Elements, Sub-elements, and Pass/Fail Elements (§ 431.204(b) and (c)).

Summary of Comments: Four agencies commented on the prohibition against rating employee performance on sub-elements, three objecting and one requesting clarification. Those objecting point to a recent MSPB decision allowing agencies to rate on sub-elements. One agency suggests requiring the use of critical elements only. One agency suggests that pass/fail elements should be allowed, citing a recent MSPB decision.

Discussion: (See Issues 10, 11 and 13.)

Change: Provisions on use of critical and non-critical elements have been placed in § 430.304. The last sentence in § 431.204(b) on sub-elements has been deleted and language in § 431.204(c) has been revised to remove the prohibition on pass/fail elements.

37. *Issue:* Use of Five Summary Rating Levels, and Requirement for Agency Decision Table to Arrive at Summary Ratings (§ 431.204(d)).

Summary of Comments: Two agencies disagree with using five summary rating levels, preferring the option to use three or four. One agency concurs with using five levels.

Five agencies object to the specific adjective labels prescribed for each of the rating levels; three of those objecting suggest paralleling PMRS rules, which provide for numbered rating levels (i.e., level 1 through level 5).

Three agencies think OPM should remove the requirement to use a decision table to derive summary ratings, because it is mechanistic and does not allow for supervisory judgment. One agency thinks that OPM should prescribe a Government-wide decision table all agencies must use.

Discussion: (See Issues 13 and 14.)

Change: The language in § 431.204 has been revised, consistent with the PMRS regulations, and moved to § 430.304. The definitions of the five rating levels have been removed. Section 430.304(g) provides for five summary rating levels and identifies them as levels 1 through 5. Adjective names are provided for levels 1 through 3 consistent with 5 U.S.C. 4314(a), permitting agency discretion to name the two levels about "Fully Successful". Additionally, reference to using a decision table has been removed, and language added to reflect that agencies must describe the method use to derive summary ratings and that the method must show that more weight will be given to critical elements than to non-critical elements.

38. *Issue:* Unsatisfactory Performance (§ 431.204(d)(2)).

Summary of Comments: Two agencies state that OPM should remove the requirement that an executive be given an unacceptable rating if his/her performance on one critical element is unacceptable.

Discussion: OPM believes that this regulatory provision reflects the statutory intent in 5 U.S.C. 4312(a) and is equitable with a similar provision in the PMRS and PMS regulations.

Change: This requirement has not been removed, but has been incorporated into the definition of "critical element" in § 430.303.

39. *Issue:* Performance Improvement Plan (PIP) (§ 431.204(e)).

All seven agencies commenting on the provision for a Performance Improvement Plan for executives request that OPM remove the provision. Five agencies say that the regulations should parallel the PMRS, and two object to the burden imposed by the PIP, believing it contrary to the intent of the Civil Service Reform Act to facilitate the removal of poor performers.

Discussion: (See Issue 15.)

Change: Language in § 431.204(e) providing for the PIP has been removed, consistent with the PMRS and PMS regulations.

40. *Issue:* Written Justification for "Outstanding" Rating (§ 431.204(f)).

Summary of Comments: Two agencies object to the requirement to write a justification for each "Outstanding" rating because of the additional paperwork; one thinks that the nature of the justification should be optional with the agency.

Discussion: (See Issue 16.)

Change: Paragraph 431.204(f), requiring written justification for an "Outstanding" rating, has been removed.

41. *Issue:* Definitions of the Five Summary Rating Levels (§ 431.204(h)).

Summary of Comments: Four agencies object to the rating level definitions provided in the proposed regulations. Three think that the definitions place too much emphasis on quantity and timeliness, which do not appropriately reflect SES work. One agency thinks that the regulations should require numbered rating levels, rather than the adjective labels in the proposed regulations.

Discussion: (See Issue 14.)

Change: Consistent with PMRS regulations, definitions of rating levels have been removed.

42. *Issue:* Establishment of Performance Standards (§ 431.204(i)).

Summary of Comments: Two agencies suggest that OPM remove the requirement to provide executives with written performance elements and standards on or before the beginning of the appraisal period, because the process of clearing executives' standards and elements is more time-consuming that for non-SES employees. They prefer allowing agency flexibility.

Discussion: Statute requires that on or before the beginning of each rating period, performance requirements for each senior executive be established in consultation with the senior executive and communicated to the senior executive. OPM agrees that the requirement that performance plans be provided in writing on or before the beginning of the appraisal period places a burden on some agencies and that agency flexibility should be provided. However, agencies are not relieved of the statutory requirement to communicate elements and standards to each senior executive on or before the beginning of the rating period.

Change: Language in § 431.204(i) has been modified and moved to § 430.304(d)(1), and requires that elements and standards be communicated to executives on or before the beginning of the appraisal period, and that written performance plans be provided to senior executives normally within 30 days of the beginning of the appraisal period.

43. *Issue:* Higher Level Review of Executives' Performance Plans (§ 431.204(k)).

Summary of Comments: Four agencies suggest that OPM remove the requirement for higher level review of executives' performance plans allowing for the employee's option to request review, or allowing agency option to provide for higher level review. Four agencies think that this review is unnecessary. Two agencies request modification of the provision to take into account situations in which the heads of major components establish the executives' performance plans.

Discussion: OPM agrees that there are circumstances when higher level review of performance plans for senior executives is impractical. Agencies may require this higher level review if it is desirable for them to do so. Unlike other performance appraisal systems, the SES performance appraisal system includes the Performance Review Board (PRB), which is required by statute. The PRB provides an effective means to ensure equity and fairness in the SES appraisal system.

Change: The requirement for higher level review of senior executive performance plans have been removed.

44 *Issue:* Performance Ratings Before a Reduction in Force (RIF) (§ 431.204(m)).

Summary of Comments: Two agencies object to allowing for a rating just before a RIF in the case of employees who have served only a minimum appraisal period.

Discussion: (See Issue 22.)

Changes: Section 431.204(m) has been removed. Paragraph 430.306(e) has been added, consistent with PMRS regulations, and provides that, when an agency cannot prepare a rating of record at the time specified in the plan, the executive's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period, at which time a rating of record shall be prepared.

45. *Issue:* Minimum Appraisal Period (§ 431.204(n)).

Summary of Comments: Two agencies commented on the minimum appraisal period provision; one agency supports the 90-day requirement and the other prefers the flexibility provided in the PMRS regulations (a minimum appraisal period of at least 90 days but not more than 120 days).

Discussion: Agencies commonly have either a 90-day or a 120-day minimum appraisal period. OPM agrees that agencies should have the flexibility provided in the PMRS regulations.

Changes: Language in § 431.206(n) has been revised and moved to § 430.305(b). Additionally, statutory language has been added in § 430.305(a)(3) regarding the appraisal of career appointees following the beginning of a new Presidential administration.

46. *Issue:* Appraisal of Executives' Performance on Details (§ 431.204 (p) and (q)).

Summary of Comments: Two agencies suggest elimination of the requirement to appraise executives' performance on details, because it is difficult to anticipate the length of details, and because it presents a burden for agencies. Two agencies comment on obtaining appraisal information for executives on details outside their agencies; one thinks this should be optional, and one requests clarification on the distinction between "performance information" and "performance ratings" required for details within agencies.

Discussion: OPM believes that as with other employees, an executive's performance throughout the appraisal period should be considered when preparing the executive's rating of record. This includes consideration of performance for periods of time when an executive is detailed or temporarily reassigned within the same agency for the minimum appraisal period, or detailed to another agency.

Change: Language in § 431.204 (p) and (q) has been moved to § 430.305(d). Paragraph (d)(2), covering details outside of the employing agency, has been modified to require the employing agency to make "a reasonable effort" to obtain appraisal information from the outside organization, which shall be considered in deriving the executive's next rating of record.

47. *Issue:* Opportunity for Executives to Respond to Their Ratings (§ 431.204(r)).

Summary of Comments: One agency thinks higher level review should take place after the Performance Review Board (PRB) review and the final rating take place. Two agencies think this provision should be revised to take into account the situation when the agency head is the rating official.

Discussion: Section 4312(b)(3) of title 5 U.S.C. requires that the senior executive be provided a copy of the appraisal and rating and given an opportunity to respond in writing to the initial rating and have that rating reviewed by an employee at a higher level before the rating becomes final. Additionally, 5 U.S.C. 4314(c)(2) requires that the PRB receive the initial rating, and any response to it by the senior executive. These provisions make it clear that the requirement for higher level review occurs prior to the review by the PRB. OPM agrees that this provision should take into account the situation when the head of the agency is the rating official.

Change: This provision is moved to § 430.306(a), and the language "unless there is no higher level" is added to take into account the situation when the agency head is the rating official.

48. *Issue:* Federal Register Notice of Appointments to a PRB (§ 431.204(s)).

Summary of Comments: One agency prefers to continue publishing in the Federal Register a roster from which PRB appointments may be made.

Discussion: The statute (5 U.S.C. 4314(c)(4)) provides that members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. It further states that notice of the appointment of an individual to serve as a member shall be published in the Federal Register.

Change: No change. This provision has been moved to § 430.307(b).

49. *Issue:* Requirement for a Written Recommendation for an Award for Each Executive Rated "Outstanding" (§ 431.204(w)).

Summary of Comments: Nine agencies object to the provision requiring a written recommendation for an award for each executive rated "Outstanding". Five of those agencies object to the increased paperwork, and offer several suggestions: make the award automatic or optional; require the rating official to recommend the award when recommending the "Outstanding" rating. Four agencies think that the provision requires awards, and think mandating awards is too restrictive on agencies.

Discussion: References to awards for senior executives more appropriately belong in other parts of the Code of Federal Regulations. Provisions for SES performance awards are found in 5 U.S.C. 5384 and rank awards are covered in 5 U.S.C. 4507 (see also Issue 27).

Change: The requirement for a written recommendation for an award for a senior executive is removed.

50. *Issue:* General Comments on Special Awards and Definitions (Part 451 and § 451.204).

Summary of Comments: Four agencies think that OPM should clarify the differences between Performance Awards (Part 531, Subpart F of the proposed regulations) and Special Awards.

Two agencies think that OPM should make the regulations on cash awards consistent for all populations covered. One agency believes that the heading of Part 451 should be changed. Four agencies think that, generally, the definitions in the special awards regulations are unclear. Five agencies request clarification of "meritorious action"; four agencies question "special act or service"; five agencies express difficulty with the definitions of "non-monetary award" and "honorary award"; and two agencies request a clearer definition of "contribution". One agency suggests adding a definition of "monetary award" which would be consistent with the definiton of that term under the Performance Awards regulations proposed for Part 531, Subpart F. One agency suggests additional language to indicate the type of award to be used for work on special task forces.

Discussion: OPM agrees with agencies that clarification is needed in this part and that a great deal of the confusion exists in the terminology in the awards program can be eliminated by establishing regulatory provisions and terminology which are consistent with the statutory bases in 5 U.S.C. Chapter 45 (Incentive Awards) and in 5 U.S.C. 5407.

OPM agrees that clarification is necessary to distinguish among the forms of recognition available for overall performance based on a current rating or record and those available for superior accomplishments, either within or outside of job requirements. Further, OPM agrees that cash awards regulations should be consistent for all populations.

Changes: To bring this part in line with its statutory authority, Part 451 is titled "Incentive Awards". A new Subpart A is titled "Agency Superior Accomplishment Awards". To make a clear distinction between performance awards for overall performance based on a current rating of record and awards under this part, performance awards provisions have been moved to Part 430, Subpart E. Additionally, a new Subpart B in Part 451 incorporates Presidential Awards to support the distinction made in statute between awards made by agencies and awards made by the President. Subpart C is reserved for Productivity Gainsharing Programs regulations.

Within Subpart A, definitions have been rewritten to clarify the types of accomplishments which can be recognized with agency Superior Accomplishment Awards. Definitions for "honorary award" and "meritorious action" have been removed. "Special act or service" has been redefined to include superior contributions or accomplishments either within or outside of the scope of the employee's job. The definition of "tangible savings" has been expanded to include accomplishments which result in dollar benefits (such as increased revenues) as well as dollar savings.

51. *Issue:* Awards Scale for Tangible Savings (§ 451.204).

Summary of Comments: Thirteen of the 29 agencies commenting on the proposed PMS regulations object to the awards scale for tangible savings. Two of those agencies think that the awards scale should remain in guidance.

Twelve of the agencies object to the reduction in amounts available to reward people who have saved money for the Government. Seven agencies think that this sends a negative message to employees at a time when the Government is emphasizing pay-for-performance, productivity and cost-savings.

One agency suggests eliminating the language in § 451.204(d) to "limit the use of monetary awards", because it is inconsistent with the intent of the Special Awards regulations.

Discussion: OPM agrees that the awards scale for contributions resulting in tangible benefits more appropriately belongs in guidance. This allows agency flexibility in establishing the amounts of awards for contributions resulting in dollar savings, particularly under appropriate special circumstances.

OPM agrees with agency comments that awards scales should not be reduced. The awards scale previously contained in guidance was comparable with awards practices in the private sector. OPM agrees that a reduction in the amount an employee receives for his or her efforts which save the Government money, or any limit on the use of monetary awards, would have an adverse impact, and would be inconsistent with the program's intended purpose.

Change: The awards scales for tangible benefits, awards over $10,000 and Presidential Awards contained in § 451.205(c) have been removed. The awards scales contained in FPM Chapter 451 will be retained and serve as a guide to agencies in establishing internal awards scales for contributions resulting in tangible and/or intangible benefits.

52. *Issue:* Agency Responsibilities (§ 451.209).

Summary of Comments: One agency disagrees with using the receipt of an award as a ranking factor in making promotions. The agency believes that it may not be valid in view of the Uniform Guidelines on Employee Selection Procedures, and that the use of such a ranking factor should be left to the agency's discretion.

One agency suggests adding a provision requiring that employees be informed of the availability of awards.

Discussion: Statutory provisions (5 U.S.C. 3362) require that receipt of an award be a factor in ranking and selecting employees who otherwise meet the requirements for promotion.

OPM agrees that provision should be made to inform employees at all levels about the program and how they can earn awards. Additionally, employees should be informed why other employees receive awards.

Change: Provisions have been added in § 451.104(i) to require that appropriate training and information be provided to supervisors and employees on the award program.

53. *Issue:* Acceptable Level of Competence (ALOC) Determination for Within-Grade Increases (§§ 531.403 and 531.404).

Summary of Comments: Four agencies and one labor organization comment on the definition of ALOC used in granting

within-grade increases (WGI's). Three agencies support the requirement for a "Fully Successful" rating for an ALOC determination. Two of those agencies and one labor organization object to requiring a "Fully Successful" rating on all critical elements for performance to be determined at an ALOC. They prefer that the ALOC determination be based on the summary rating. Further, they believe agencies should have the option to rate an employee "Minimally Successful" on one element, while giving him or her a "Fully Successful" summary rating. One agency and one labor organization note that there is no comparable requirement for determining PMRS employees' merit increases. One agency points out that the definitions of ALOC were inconsistent, referring in instance to performance in the assigned position.

Discussion: OPM agrees that the definitions for ALOC should be consistent. OPM also agrees that the requirements for determining WGI's for GS employees should be parallel with the requirements for determining merit increases for PMRS employees, in that an ALOC determination should be based only on a summary rating of "Fully Successful".

Changes: To be consistent, the provisions on Acceptable Level of Competence in §§ 531.403 and 531.404 both refer to an employee's performance of the duties and responsibilities of his or her assigned position. The requirement for a "Fully Successful" rating on each critical element has been deleted; an employee can be determined to be at an Acceptable Level of Competence based on a current rating of record of at least "Fully Successful".

To reflect a change in definitions in Part 430, the term "rating of record" has been substituted for "summary rating". An additional provision on using current ratings of record for ALOC purposes has been added at § 531.404(a)(2) to parallel PMRS regulations. Also, a provision formerly included in Part 430, requiring a more current rating of record when an ALOC determination is inconsistent with the current rating of record, has been moved to § 531.404(a)(1); (see also Issue 24 "Performance Rating for a Within-Grade Increase").

54. *Issue:* Delay in ALOC Determinations for Granting Within-Grade Increases (WGI's) (Erroneously designated § 531.408).

Grade Increases (WGI's) (Erroneously designated § 531.408).

Note.—Due to a typesetting error, this material was misnumbered, and the revisions to § 531.408 were omitted. A correction notice, including the omitted material, was published October 7, 1985 at 50 FR 40865, for a 30-day comment period. OPM has received no comments on that portion of the regulations.

Summary of Comments: Four agencies object to delaying ALOC determinations and WGI's through no fault of the employees. Three of these agencies recommend that any such delayed within-grade increases be granted retroactively to the eligibility date. The fourth agency recommends that such employees be granted a within-grade increase based on a previous rating of record or a presumed "Fully Successful" rating. One agency recommends that OPM add Intergovernmental Personnel Act (IPA) assignments as a reason for waiving an ALOC determination and granting a within-grade increase. Several additional comments request clarification of the regulations and a closer linkage between these regulations and the PMRS regulations.

Discussion: It has always been the intent that, if an employee's ALOC determination is delayed because he or she has not been provided with performance requirements and also has not been rated within 90 days of the ALOC determination (both circumstances beyond his or her control), the employee would receive a WGI, if approved, retroactively to the eligibility date. It is OPM's intention that an up-to-date performance rating be used wherever possible in making an ALOC determination. This can be done in most cases by extending the appraisal period until the minimum appraisal period has been served under performance requirements, rating the employee, making the ALOC determination, and granting the WGI retroactively if warranted. An IPA assignment is currently covered for ALOC determination in § 531.406(c)(1)(v), so no change is necessary in these regulations.

Changes: Section 531.409(c)(2) has been amended to clarify that a within-grade increase based on a delayed ALOC determination will be granted retroactively to the eligibility date. Editorial changes have been made to § 531.409(d) to clarify the reasons for waiver of an ALOC determination.

55. *Issue:* Continuing Evaluation After Withholding a WGI (§ 531.411).

Summary of Comments: One agency indicates that employees who are denied a WGI should be rated again after no less than the minimum appraisal period and no more than 52 calendar weeks. This agency also recommends that an employee's right to appeal a within-grade denial should be eliminated.

Discussion: OPM believes that agencies should have flexibility to determine the time required for an employee to demonstrate sustained performance at an acceptable level of competence. However, fairness dictates that the employee's performance should be reevaluated after no more than 1 year. The right to appeal the denial of a WGI is a statutory right of all employees which cannot be denied by regulation.

Change: No change.

56. *Issue:* Level of Performance Required for Quality Step Increase (QSI) (§ 531.504).

Summary of Comments: Three agencies agree that QSI's should only be granted to employees who receive a performance rating of "Outstanding". Four agencies feel that limiting QSI's only to employees rated "Outstanding" is too restrictive, and would lead to inflated ratings, a reduction in the number of QSI's granted, and an inability to reward adequately employees rated "Exceeds Fully Successful" who substantially exceed performance standards on a continuing basis.

Discussion: Pay-for-performance dictates that the QSI should be granted only to employees with the highest quality performance because it constitutes an increase to base pay, the value of which continues over many years. Employees rated "Exceeds Fully Successful" can be rewarded through the agencies' authority to grant one-time performance awards.

Change: No change.

57. *Issue:* Effective Date of Quality Step Increases (§ 531.506).

Summary of Comments: One agency agrees with the provision to grant QSI's as soon as practicable after the performance rating to reinforce superior performance. Three agencies prefer greater flexibility in the granting of QSI's: to grant QSI's at any time during the appraisal period, as performance awards are granted; or to adjust timing of QSI's for employees in steps four and seven of the grade, so that within-grade increase waiting periods would not be prolonged; or to grant QSI's once each year in conjunction with performance awards. One agency thinks that QSI's should be granted within 60 days of the rating of record.

Discussion: OPM believes there must be a firm connection between exemplary performance and its rewards. The closer in time the reward is given for the "Outstanding" performance that triggers the reward, the more meaningful the reward. A QSI should be made as soon as practicable after a rating of record is approved. However, OPM also

believes each agency should have the flexibility to meet unusual requirements in the timing of QSI's in certain instances. The regulations provide sufficient flexibility so that an agency can ensure that the receipt of a QSI will not prolong the waiting period for a future WGI.

Changes: No change.

58. *Issue:* Agency Plans for Granting QSI's (§ 531.507).

Summary of Comments: One agency thinks that the requirements to develop a plan for QSI's and to inform all employees annually of the numbers of QSI's granted is an unwarranted administrative burden. Two other agencies disagree with the requirement that employees be informed of the number of QSI's granted each year by grade level, and think that the requirement should be eliminated or changed to require informing employees of only the total number of QSI's. One agency recommends addition of a provision requiring that guidance and training on QSI's be given to managers and supervisors.

Discussion: OPM believes that the QSI is an integral part of the pay-for-performance system for GS employees, and, therefore, a plan for awarding QSI's must be included as part of an *integral* Performance Management Plan. OPM also agrees that training on the appropriate use of the QSI should be an integral part of total training on the Performance Management System and Plan. E.O. 11721 requires that agencies report annually to employees the number of QSI's granted in the agency. To ensure employee perception of equity in the distribution of QSI's, OPM believes that it is essential that the report include not only the total number but also the distribution by grade level of QSI's in the agency.

Change: A new § 531.507(e) requires agency QSI plans to provide training and evaluation on the use of QSI's.

59. *Issue:* General Comments on Part 531, Subpart F, and Definitions (§ 531.604).

Summary of Comments: Two agencies believe that the performance awards provisions should be moved from Part 531 to another part Title 5, CFR, because awards are not additions to basic pay. These agencies think that Part 531 should only include pay-setting regulations.

Two agencies suggest that, to preclude confusion and maintain consistency for supervisors and employees, performance and cash awards programs should be as consistent and equitable as possible for both populations. One agency requests clarification of the distinction between special act or service awards as contained in this subpart, versus the same awards as contained in Part 451.

One agency suggests expanding definitions of the types of awards to make clearer distinctions between them. Two agencies ask for clarification of language in the definitions such as "monetary connotation for the agency but not for the employee", contained in the definition of "non-monetary award".

Discussion: OPM agrees that there should be consistency and equity between performance and cash awards programs for supervisors and employees. OPM further agrees that clarification in terminology is needed to clearly distinguish between awards based on overall performance (rating of record) and those based on superior accomplishments. Such a distinction will reduce existing confusion surrounding awards programs and assist agencies in administering programs. OPM concurs that performance awards provisions are inappropriately placed in Part 531 because these awards are not increases to basic pay.

Change: Part 531, Subpart F has been moved to Part 430, Subpart E and has been significantly revised to parallel, as consistently as possible, the provisions for performance awards for the PMRS. (Note: As indicated above, some of the changes to parallel the performance awards systems suggested by commenters are substantially different from the proposed rules. OPM agrees with the changes, and is proposing them at § 430.504 for comment elsewhere in today's daily issue. Therefore, § 430.504 is *reserved* in these final regulations.)

The changes in these final regulations result in the elimination of unclear or confusing definitions in the proposed regulations and facilitate a clear distinction between performance awards and superior accomplishment awards (cash awards) covered under Part 451, Subpart A (see also Issue 50). Additionally, because performance awards are moved to Part 430, the Part 532 provisions for performance awards for Prevailing Rate employees are removed as prevailing rate employees are covered under Part 430.

60. *Issue:* Agency Responsibilities (§ 531.609).

Summary of Comments: One agency objects to including a performance award component in agency Performance Management Plans, and objects to submitting the plan to OPM for review and approval. One agency agrees and one agency disagrees with the requirement that performance awards be considered as selective factors for merit promotions.

Discussion: Performance awards are an integral part of the PMS. In line with PMRS requirements for development of a comprehensive plan to administer all components of the system, plans for each component (performance appraisal, performance awards, pay, and superior accomplishment awards) must be submitted to OPM for review and approval.

Title 5, U.S.C., section 3362 requires that awards be a factor in ranking and selecting employees who otherwise meet the requirements for promotion.

Change: No change. (Agency responsibilities moved to § 430.506.)

61. *Issue:* Part 771—Agency Administrative Grievance System.

Summary of Comments: None.

Discussion: See Issue 25—"Reconsideration of a Performance Rating".

Changes: Section 771.206(c)(3) has been deleted (see change in Issue 25). Additionally, § 771.206(c)(1)(x) has been modified to make a technical correction by including the amount of an award under matters excluded.

62. *Issue:* Implementation Schedule (§§ 430.208 and 431.301).

Summary of Comments: Nineteen agencies and one labor organization object to the proposed implementation schedule for Performance Management Plans under the PMS as being too short and unrealistic. Some of the reasons include:

—Insufficient time to consult with labor organizations, make changes, and train employees;

—Limited resources;

—Logistical problems in large organizations;

—Continuing involvement with implementing the new PMRS; and

—Difficulty implementing in the middle of performance appraisal cycles.

Agencies recommend several alternatives, including:

—Implementation at the beginning of the agency's next appraisal cycle;

—Implementation by October 1, 1986;

—Submission of plans to OPM by July 1, 1986; and

—Deadlines expressed in terms of time after publication of the final regulations.

One labor organization recommends that OPM use a staggered 3-year schedule for submission and implementation of plans, as provided in the final regulations published in October 1983.

Discussion: OPM intends to implement the PMS as soon as feasible, to eliminate any unnecessary differences among SES, Prevailing Rate, GS, and PMRS employees. OPM is

aware that agencies must be given adequate time to develop sound Performance Management Plans and to train employees, and experience with implementing PMRS has shown this process to be time consuming. However, experience developing PMRS plans should assist agencies and considerably shorten the time needed to develop plans and train employees.

In order to cause as little disruption as possible in agency performance appraisal cycles, OPM agrees that revised performance appraisal requirements should be implemented at the beginning of the employees' next performance appraisal cycle, rather than in mid-cycle. Because the plan submission and implementation dates have been significantly extended in the final regulations, and because OPM intends to eliminate as much as possible any disparity among systems, implementation staggered by grade levels is no longer needed.

Changes: As indicated in the **"DATES"** section above, agencies must submit their Performance Management Plans to OPM 90 days after the date of publication of these regulations. Generally, OPM will approve the Plans within 90 days after the Plans are received by OPM.

Agencies' Performance Management Plans must be implemented no later than 90 days after the date of OPM approval. At that time, all provisions of these regulations become applicable, except the new performance appraisal provisions. The performance appraisal provisions become applicable to each employee at the beginning of his or her next appraisal cycle after OPM approval of the Performance Management Plan.

For the purposes of taking performance-based personnel actions, including reassignment, reduction in grade or removal under 5 U.S.C. 4303, the agency's current performance appraisal plans remain in effect until OPM approves the performance appraisal parts of the new PMS Performance Management Plan, and those parts are implemented on the schedule outlined below.

Agencies must implement their Plans as specified above except where provisions of an existing negotiated agreement are in explicit conflict with these PMS regullations, in which case the provisions of the negotiated agreement will remain in effect until its expiration. Agencies may request OPM approval of the following exceptions:

1. For specific provisions of OPM regulations that are not in explicit conflict with existing provisions of a labor agreement, but would cause significant inequities if implemented in combination with provisions of the labor agreement; or

2. Where apparently conflicting provisions of negotiated agreements are consistent with the intent of OPM regulations.

For the convenience of agencies in application of the new regulations, following is the schedule for application of the PMS regulations.

Part 430 Subpart A—30 days after the date of publication.

Parts 293, 300, 335, Subpart E of Part 430,* Subparts D and E of Part 531, and Part 771—90 days after plan approval.

Subparts B and C of Part 430—At the beginning of the employee's next performance appraisal cycle.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government employees.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 300

Administrative practice and procedure, Government employees.

5 CFR Part 335

Government employees.

5 CFR Part 430

Administrative practice and procedure, Decorations, Medals, Awards, Government employees.

5 CFR Part 451

Decorations, Medals, Awards, Government employees.

5 CFR Part 531

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 771

Administrative practice and procedure, Government employees.

*Pending final rulemaking on § 430.504, OPM may extend the implementation date for the preformance awards component of the Performance Management Plan.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, as follows:

PART 293—Personnel Records

1. The Authority citation for Part 293 is revised to read as follows:

Authority: 5 U.S.C. 552, 4302a, and 4315; E.O. 12107 (December 28, 1978); 3 CFR 1954–1958 Comp.; 5 U.S.C. 1103, 1104 and 1302; 5 CFR 7.2; E.O. 9830; 3 CFR 1943–1948 Comp.

2. In Subpart D, § 293.402(a) and (b) are revised to read as follows:

Subpart D—Employee Performance File System Records

* * * * *

§ 293.402 Establishment of separate employee performance record system.

(a) Copies of employees' performance ratings of record, including the performance plans on which the ratings are based, must be placed in either the employee's Official Personnel Folder (OPF) or in the Employee Performance File (EPF). However, other performance-related documents may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF, and removed whenever the OPF (except as required in § 293.404(b)) is transferred to another agency. Performance ratings of record, including the performance plans on which the ratings are based, shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

(b) Except for performance records maintained in the OPF consistent with paragraph (a) of this section, each agency having employees occupying a position described in § 293.401 shall provide for maintenance of performance-related records for such employees in this EPF system. The agency may elect to retain records in a separate file that is located in the same office with the OPF, or in an envelope kept in the OPF itself. If the agency determines that a separate EPF is cost-effective, such a file may be located in another designated agency office (as specified in the agency's performance appraisal plan) including with supervisors or managers (hereinafter referred to as rating officials) or with

Performance Review Boards. Any supporting documents that the agency may prescribe as necessary for agency officials in performance of their duties shall be kept in these files.

* * * * *

3. Sections 294.404(a)(1) and (a)(2) are revised to read as follows:

§ 293.404 Retention schedule.

(a)(1) Except as provided in § 293.405(a), performance ratings or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by the SES, be retained as prescribed below:

(i) Performance ratings of record, including the performance plans on which they are based, shall be retained for 3 years;

(ii) Supporting documents shall be retained for as long as the agency deems appropriate (up to 3 years);

(iii) Performance records superseded (e.g., through an administrative or judicial procedure) and performance-related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of 3 years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with the employee who changes positions, shall be as agencies prescribe and consistent with § 293.405(a).

* * * * *

4. Section 293.405(a) is revised to read as follows:

§ 293.405 Disposition of records.

(a) When the OPF of a non-SES employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings of record that are 3 years old or less, including the performance plan on which the most recent rating was based, and the summary rating prepared when the employee changes positions, as prescribed in Part 430 of this chapter. Also, the "losing" office will purge from the OPF all performance ratings and performance plans that are more than 3 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293–31.

* * * * *

PART 300—EMPLOYMENT [GENERAL]

5. The authority citation for Part 300 is revised to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted. Secs. 300.101–300.104 also issued under 5 U.S.C. secs. 7151, 7154; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803, unless otherwise noted.

6. Section 300.602 is revised to read as follows:

* * * * *

Subpart F—Time-in-Grade Restrictions

* * * * *

§ 300.602 Restrictions.

The time-in-grade restrictions in this subpart are subject to the eligibility requirements based on performance in § 335.104 of this chapter.

(a) *Advancement to positions at GS–12 and above.* An agency may advance an employee to a position at GS–12 or above only after he or she has served a minimum of 1 year in the next lower grade.

(b) *Advancement to positions at GS–6 through GS–11.* An agency may advance an employee to a position at GS–6 through GS–11 only after he or she has served a minimum of —

(1) One year in a position two grades lower, when the position to which he or she is advanced is in a line of work properly classified at two-grade intervals; or

(2) One year at the next lower grade when the position to which he or she is advanced is in a line of work properly classified at one-grade intervals.

(c) *Advancement to positions at GS–5 or below.* An agency may advance an employee to a position at GS–5 or below which is not more than two grades above the lowest grade he or she held within the preceding year under a nontemporary appointment.

* * * * *

PART 335—PROMOTION AND INTERNAL PLACEMENT

7. The authority citation for Part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–1958 Comp. page 218.

8. Section 335.104 is revised to read as follows:

Subpart A—General Provisions

* * * * *

§ 335.104 Eligibility for career ladder promotion.

No employee shall receive a career ladder promotion unless his or her current rating of record under Part 430 of this chapter is "Fully Successsful" (level 3) or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder.

PART 430—PERFORMANCE MANAGEMENT

9. The authority citation for Part 430 is revised to read as follows, and the authority for Subpart D is removed.

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

10. Subpart A is added to Part 430 to read as follows:

Subpart A—Performance Management System

Sec.

Subpart A—Performance Management System

§ 430.101 Authority.

Chapters 43, 45, 53, and 54 of title 5, U.S. Code, provide for performance appraisal, awards, pay, and the Performance Management and Recognition System for Federal employees. This subpart supplements and implements those portions of the law as well as Parts 451, 531, and 540 of this chapter.

§ 430.102 Performance management.

Performance management is the systematic process by which an agency integrates performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals.

§ 430.103 Performance Management Plans.

(a)(1) A Performance Management Plan is the description of an agency's system for implementing all aspects of performance management.

(2) OPM will provide checklists for Performance Management Plans or parts of plans containing all the components necessary for approval of a plan or part of a plan.

(b) Agencies must submit all parts of proposed Performance Management Plans to OPM for review and approval. If major subcomponents of an agency propose to modify an element of the agency's system that is included in the Performance Management Plan Checklist, or to develop a separate system based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval. Performance Management Plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Performance appraisal systems plans required under 5 U.S.C. 4302, 4302a, and 4312 and Subparts B, C, and D of this part.

(2) Performance Management and Recognition System (PMRS) plans required under Part 540 of this chapter.

(3) Performance awards plans required under Subpart E of this part, including the agency's method for funding and payment of performance awards and the method for determining projected expenditures.

(4) Superior Accomplishment Awards plans required under Part 451, Subpart A.

(5) Productivity Gainsharing Program plans required under Part 451, Subpart C.

(6) Plans for determining and distributing within-grade increases under Part 531, Subpart D of this chapter; and

(7) Plans for awarding quality step increases under Part 531, Subpart E of this chapter.

(c) Agencies shall submit to OPM for review and approval any changes to their Performance Management Plans that modify any element of the agency's system that is included in a Performance Management Plan Checklist.

(d) Each agency shall maintain records and submit reports required by OPM regarding the operation of an agency Performance Management System or any part of a plan.

11. Subpart B of Part 430 is revised to read as follows:

Subpart B—Performance Appraisal for General Schedule and Prevailing Rate Employees

Sec.

Subpart B—Performance Appraisal for General Schedule and Prevailing Rate Employees

§ 430.201 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code (5 U.S.C. 4301–4305) provides for the establishment of agency performance appraisal systems and for appraisal of employees. This subpart contains regulations which the Office of Personnel Management (OPM) has prescribed for Performance Appraisal Systems for General Schedule and prevailing rate employees, and implements and supplements the provisions of 5 U.S.C. 4301–4305.

(b) *Purpose.* It is the purpose of this subpart to ensure that performance appraisal systems for employees are used as a tool for executing basic management and supervisory responsibilities by—

(1) Communicating and clarifying agency goals and objectives;

(2) Identifying individual accountability for the accomplishment of organizational goals and objectives;

(3) Evaluating and improving individual and organizational accomplishments; and

(4) Using the results of performance appraisal as a basis for adjusting basic pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

§ 430.202 Coverage.

(a) *Employees and agencies covered by statute.* (1) Section 4301(a) of title 5, United States Code, lists agencies covered by this subpart.

(2) Section 4301(2) of title 5, United States Code, lists employees covered by statute by this subpart. However, employees covered by the PMRS are not covered by this subpart.

(b) *Statutory exclusions.* This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301 (1) and (2), the United States Postal Service and the Postal Rate Commission, or to employees covered by the PMRS consistent with 5 U.S.C. 4302a and 5 U.S.C. 5402.

(c) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). The following are excluded:

(1) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(2) Positions filled by noncareer executive assignments under Part 305 of this chapter.

(d) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of the Office of Personnel Management to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this subpart, terms are defined as follows—

"Appraisal" means the act or process of reviewing and evaluating the performance of an employee against the described performance standard(s).

"Appraisal period" means the period of time established by an appraisal system for which an employee's performance will be reviewed.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and non-critical elements, establishment of performance standards, communication of elements and standards to employees, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

"Non-critical element" means a component of an employee's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

"Performance" means an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

"Performance Appraisal System": see Appraisal system.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The Performance Management Plan, which includes the performance appraisal plan, must be submitted to OPM for review and approval as required by Subpart A of this part.

"Performance plan" means the aggregation of all of an employee's written critical and non-critical elements and performance standards).

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

"Progress review" means a review of the employee's progress toward achieving the performance standards and is not in itself a rating.

"Rating": see Summary rating.

"Rating of record" means the summary rating required at the time specified in the Performance Management Plan or at such other times as the Plan specifies for special circumstances.

"Summary rating" means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.204 (g) and (h) of this subpart).

§ 430.204 Agency performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for employees covered by this subpart.

(b) Under each appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (h) of this section, must be assigned.

(c) Each appraisal system shall encourage employee participation in establishing performance plans. This may be accomplished by means including, but not limited to, the following:

(1) Employee and supervisor discuss and develop performance plan together;

(2) Employee provides to supervisor a draft performance plan;

(3) Employee comments on draft performance plan prepared by supervisor; and

(4) Performance plan is prepared by a group of employees occupying similar positions, with supervisor's approval.

Final authority for establishing such plans rests with the supervising officials.

(d) (1) Each appraisal system shall provide for establishing performance elements and standards based on the requirements of the employee's positions, providing written performance plans to employees at the beginning of each appraisal period (normally within 30 days), and appraising employees based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives should, when appropriate, be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

(e) Each appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each appraisal system shall provide that performance plans shall be in writing and shall be reviewed and approved at the beginning of the appraisal period by a person at a higher level in the organization than that of the appraising official. Agencies may describe exceptions to higher level review and approval of performance plans in their Performance Management Plans.

(g) Each appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(h) Each appraisal system shall provide for five summary rating levels. The rating levels must include an "Unacceptable" level, a level between "Unacceptable" and "Fully Successful", a "Fully Successful" level, and two levels which are above "Fully Successful." For purposes of this part, "Unacceptable" is referred to as level 1, the level between "Unacceptable" and "Fully Successful" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(i) Each appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to formal training, on-the-job training, counseling, and closer supervision.

(j) Except with respect to employees occupying positions in Schedule C as authorized by § 231.3301 of this chapter—

(1) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee whose performance is "Unacceptable", but only after affording the employee a reasonable opportunity to demonstrate acceptable performance, as required by 5 U.S.C. 4302(b)(6).

(2) At the time that an agency identifies the critical element(s) for which performance is "Unacceptable", the employee must be informed of the performance standards that must be reached in order to be retained.

(3) If, at the conclusion of the opportunity period referred to in paragraph (j)(1) of this section, the employee's performance continues to be "Unacceptable", the agency must initiate reassignment, reduction in grade, or removal, subject to the provisions of 5 U.S.C. 4303.

(k) When an employee's position under any Federal pay system is converted to a pay system covered by this subpart, and when there is no change of duties and responsibilities, the employee's rating of record will be considered to have been derived under 5 U.S.C. 4302 and from the position which the employee now occupies.

§ 430.205 Appraisal of performance.

(a) *Appraisal period.* Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. Employees shall generally be given a rating of record on an annual basis. Agencies may provide for longer appraisal periods when duties and responsibilities of a position or the tour of duty of a position so warrant. Systems shall provide for preparing a summary rating when an employee changes positions during the appraisal period, if the employee has served for the minimum appraisal period in the position from which he/she has

changed; agency Performance Management Plans must describe how these ratings and any other ratings given throughout the appraisal period will be taken into consideration in deriving the next rating of record.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days but not more than 120 days.

(c) Appraisal of each element. An employee must be appraised on each critical and non-critical element in the employee's performance plan, unless the employee has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When employees are detailed or temporarily promoted within the same agency, and the detail or temporary promotion is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion. Ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next rating of record.

(2) When employees are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the employee's next rating of record.

(i) If an employee has served in the employing agency for the minimum appraisal period, the employee must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an employee has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating based on a performance plan obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each employee at least once during the appraisal period. At a minimum, employees shall be informed of their level of performance by comparision with the performance elements and standards established for their positions.

(f) *Appraising disabled veterans.* The performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

§ 430.206 Ratings.

(a) *Written rating.* A written rating of record must be given to each employee as soon as practicable after the end of the appraisal period.

(b) *Appraisal of each critical and non-critical element.* Employees must be appraised on each critical element and non-critical element of the performance plan(s) on which the employee has had a chance to perform.

(c) *Higher level review.* Ratings of record and preformance-based personnel actions shall be reviewed and approved by a person(s) at a higher level in the organization than that of the appraising official. Ratings of record may not be communicated to employees prior to approval by the final reviewer. This does not preclude communication about appraisal of performance between a supervisor and an employee prior to the determination of the rating of record. Ratings of record must be approved by the official with the responsibility for managing the performance awards budget within the agency. Agencies may describe exceptions to higher level approval of ratings of record and performance-based personnel actions in their Performance Management Plans.

(d) *Forced distribution.* An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful". These procedures must be described in the agency's Performance Management Plan.

(e) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared.

(f) *Transfer of rating.* If an employee moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.405(a) of this chapter. A summary rating must be prepared as required by § 430.205(a) of this subpart, which must be taken into consideration by the gaining agency when deriving the next rating of record.

§ 430.207 Performance appraisal advisory committees. [Reserved]

§ 430.208 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.209 OPM review of performance appraisal systems.

(a) OPM will review performance appraisal systems to determine conformance to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter I of chapter 43 of title 5, United States Code, or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.210 Performance appraisal plans.

Agencies must submit proposed performance appraisal plans to OPM for approval as part of Performance Management Plans in accordance with Subpart A of this part and provisions of this subpart.

12. Subpart C is added to Part 430 to read as follows:

Subpart C—Performance Appraisal for the Senior Executive Service (SES)

Sec.

Subpart C—Performance Appraisal for the Senior Executive Service (SES)

§ 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, U.S. Code (5 U.S.C. 4311–4314) provides for the establishment of Senior Executive Service (SES) performance appraisal systems, and for appraisal of the performance of senior executives (as defined in 5 U.S.C. 3132(a)). This subpart contains regulations which the Office of Personnel Management (OPM) has prescribed for performance appraisal in

the SES, and supplements and implements the provisions of 5 U.S.C. 4311–4315.

(b) *Purpose.* It is the purpose of this subpart to ensure that performance appraisal systems for employees are used as a tool for executing basic management and supervisory responsibilities by—

(1) Communicating and clarifying organizational goals and objectives;

(2) Identifying individual accountability for the accomplishment of agency goals and objectives;

(3) Evaluating and improving individual and organizational accomplishments; and

(4) Using the results of performance appraisal as a basis for adjusting base pay, training, rewarding, reassigning, retaining, and removing employees.

§ 430.302 Coverage.

(a) All senior executives covered by subchapter II of chapter 31 of title 5, United States Code, are covered by this part.

(b) Section 3132(a)(1) of title 5, United States Code identifies agencies covered by this subpart.

§ 430.303 Definitions.

In this subpart, terms are defined as follows:

"Appointing authority" means the agency or department head or his or her designee.

"Appraisal" means the act or process of reviewing and evaluating the performance of the executive against the described performance standard(s).

"Appraisal period" means the period of time established by an appraisal system for which the senior executive's performance will be reviewed.

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter II of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and noncritical elements, establishment of performance standards, communication of elements and standards to senior executives, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

"Critical element" means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unsatisfactory performance on the element would result in unsatisfactory performance in the position.

"Final rating" means the rating of record assigned by an appointing authority after considering the recommendations of a Performance Review Board.

"Initial rating" means the summary rating made by the senior executive's supervising official and provided to the Performance Review Board.

"Non-critical element" means a component of an executive's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

"Performance" means the senior executive's accomplishment of assigned work as specified in the critical and non-critical elements of the executive's position.

"Performance Appraisal": (see Appraisal)

"Performance Appraisal System": see Appraisal system.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of the agency's mission and goals. The Performance Management Plan, which includes the SES performance appraisal plan, must be submitted to OPM for review and approval as required in § 430.310 of this subpart and in Subpart A of this part.

"Performance plan" means the aggregation of all of the senior executive's written critical and non-critical elements and performance standard(s).

"Performance requirement" means performance standard.

"Performance standard" means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, cost efficiency, timeliness, and manner of performance.

"Progress review" means a review of the executive's progress toward achieving the performance standards and is not in itself a rating.

"Rating of record" means the final rating.

"Summary rating" means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.304 (f) and (g) of this subpart).

§ 430.304 SES performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for executives covered by this subpart.

(b) Under each SES appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An executive must be appraised on each critical and non-critical element in the executive's performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (g) of this section, must be assigned.

(c) Each SES appraisal system shall require establishing performance plans in consultation with the senior executive. Final authority for establishing such plans rests with the supervising officials.

(d) (1) Each SES appraisal system shall provide for establishing performance elements and standards based on the requirements of senior executives' positions, communicating those elements and standards to senior executives at or before the beginning of each appraisal period, providing written performance plans normally within 30 days of the beginning of the appraisal period, and appraising senior executives at least annually based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives must be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

(e) Each SES appraisal system shall provide for a minimum of three rating levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each SES appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(g) Each SES appraisal system shall provide for five summary rating levels. The rating levels must include an "Unsatisfactory" level, a "Minimally

Satisfactory" level, a "Fully Successful" level and two levels which are above "Fully Successful." For purposes of this subpart, "Unsatisfactory" is referred to as level 1, "Minimally Satisfactory" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(h) Each SES appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to formal training, on-the-job training, counseling, and closer supervision.

(i) Subject to the provisions of Part 359, Subpart E of this chapter:

(1) Any executive receiving a level 1 ("Unsatisfactory") rating of record shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service;

(2) Any executive who receives two level 1 ("Unsatisfactory") ratings of record in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

(3) Any executive who twice in any period of 3 consecutive years receives less than a level 3 "Fully Successful" rating of record shall be removed from the Senior Executive Service.

§ 430.305 Appraisal of performance.

(a) *Appraisal period.* (1) Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. The appraisal period will end no earlier than June 30 nor later than September 30 of the same year. Systems shall provide for preparing a summary rating when an executive changes positions during the appraisal period, if the executive has served for the minimum appraisal period in the position from which he/she has changed; agency Performance Management Plans must describe how these ratings will be taken into consideration in deriving the next rating of record. A summary rating prepared when an executive changes positions during the appraisal period shall not be considered an initial rating.

(2) Except as provided in paragraph (b) of this section, a performance appraisal period may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance.

(3) Notwithstanding paragraphs (a)(2) and (b) of this section, in the case of a career appointee, an appraisal and rating may not be made within 120 days after the beginning of a new Presidential administration.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days and not more than 120 days, except as provied in paragraph (a)(3) of this section.

(c) *Appraisal of each element.* An executive must be appraised on each critical and non-critical element in the executive's performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When senior executives are detailed or temporarily reassigned within the same agency, and the detail or temporary assignment is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to the executives as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary assignment. Ratings on critical elements must be prepared for these details and temporary assignments and must be considered in deriving a senior executive's next rating of record.

(2) When senior executives are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the executive's next rating of record.

(i) If an executive has served in the employing agency for the minimum appraisal period, the executive must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an executive has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating using appraisal information obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each executive at least once during the appraisal period. At a minimum, executives shall be informed of their level of performance by comparison with the performance elements and standards established for their positions.

§ 430.306 Ratings.

(a) *Initial Rating.* Appraisal systems shall provide for:

(1) A written initial rating of the executive's performance made by the executive's supervising official, and provided to the senior executive;

(2) An opportunity for the senior executive to respond in writing to an initial rating;

(3) An opportunity for review of the rating by an employee in a higher executive level than that of the supervisor, unless there is no one at a higher level, before review by the PRB as provided in § 430.307 (e) and (g);

(4) Provision of the senior executive's response to both the official making the higher level review and to the PRB; and

(5) Provision of copies of the reviewer's comments and recommendations to the senior executive, the supervising official, and the PRB.

(b) *Higher level review.* (1) Agency performance appraisal systems may provide for a mandatory second level review of all initial ratings.

(2) A senior executive is entitled to only one higher level review unless the agency provides otherwise.

(c) *Final rating.* A written rating of record of the executive's performance shall be made on an annual basis by the appointing authority only after considering the recommendations by the PRB with respect to the performance of the senior executive as provided in § 430.307.

(d) *Forced distribution.* An agency may not prescriber a distribution of levels of ratings for employees covered by this subpart. However, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful". These procedures must be described in the agency's Performance Management Plan.

(e) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the executive's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared.

(f) *Transfer of rating.* If an executive moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.404(b)(2) of this chapter. A summary rating must be prepared as required in § 430.305(a) which must be taken into consideration by the gaining agency when deriving the next rating of record.

(g) *Documentation.* Agencies shall provide to each senior executive a copy of the following documents at the time

they are prepared: the initial rating, along with notification of the right to respond in writing and to request a higher level review before the rating becomes final; any comments and recommended changes by a higher level executive; and the final rating. As required in § 293.404(b)(1) of this chapter, agencies are required to maintain all performance related records for no less than 5 years from the date the rating is issued.

§ 430.307 Performance Review Boards (PRBs).

As required by 5 U.S.C. 4314(c), each agency is required to establish one or more PRBs to make recommendations to the appointing authority on the performance of senior executives in the agency.

(a) Each PRB in an agency shall have three or more members appointed by the head of the agency or by another official or group acting on behalf of the head of the agency.

(b) Notice of appointment to the PRB must be published in the **Federal Register.**

(c) The members of the PRB must be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal.

(d) When appraising a career appointee, more than one-half of the membership of the PRB must be SES career appointees unless OPM determines that there exists an insufficient number of career appointees available to comply with the requirement.

(e) Each PRB will review and evaluate the initial rating, the senior executive's written response, if any, and the written comments, if any, on the initial rating by a higher level executive, and will conduct such further review as the PRB finds necessary.

(f) Individual PRB members must not take part in any PRB deliberations involving their own appraisals.

(g) The PRB must make a written recommendation concerning each senior executive's rating of record.

§ 430.308 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and senior executives on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.309 OPM review of SES appraisal systems.

(a) OPM will review performance appraisal systems to determine if they conform to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.310 SES performance appraisal plans.

Agencies must submit proposed performance appraisal plans to OPM for approval as part of Performance Management Plans in accordance with Subpart A of this part and provisions of this subpart.

13. Subpart E is added to Part 430 to read as follows:

Subpart E—Performance Awards

Sec.

Subpart E—Performance Awards

§ 430.501 Authority and coverage.

(a) This subpart contains the Office of Personnel Management's (OPM) regulatory requirements for establishing and conducting the performance awards component of the Performance Management System, under the authority of title 5, United States Code, chapters 43 and 45.

(b) This subpart applies to employees as defined under section 2105 of title 5, United States Code, but does not include employees under the Performance Management and Recognition System, nor employees in the Senior Executive Service.

(c) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

(d) Refer to Part 451, Subpart A of this chapter for the regulatory requirements for granting Superior Accomplishment Awards to employees for suggestions, inventions, and special acts or services.

§ 430.502 Definitions.

In this subpart, terms are defined as folows:

"Performance award" means a performance-based cash payment to an employee based on the employee's rating of record. A performance award does not increase base pay.

"Performance award budget" means the amount of money allocated by an agency for distribution as performance awards to covered employees.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The Performance Management Plan, which includes the performance awards plan, must be submitted to OPM for review and approval as required by § 430.506 of this subpart and Subpart A of this part.

"Rating of record" means the summary rating required at the time specified in the Performance Management Plan or at such other times as the plan specifies for special circumstances.

§ 430.503 Policy.

(a) The purpose of performance awards is to motivate employees by recognizing and rewarding those who attain high levels of performance.

(b) An award under this subpart shall be based on the employee's rating of record for the current appraisal period for which performance awards are being paid.

(c) (1) Agency procedures for making performance awards determinations must include a requirement for review and approval of each determination by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency, and also by the official(s) with responsibility for managing the performance awards budget within the agency.

(2) Higher level review and approval of performance awards determinations, as required in paragraph (c)(1) of this section must be made by the officials also responsible for making the performance appraisal decisions.

(d) Awards under this part shall be documented in the Official Personnel Folder to reflect the nature of the award, including the amount of award.

(e) A performance award shall be given due weight when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362.

(f) OPM encourages agencies to make maximum use of their authorities under chapters 43 and 45 of title 5, United States Code, within existing appropriated funds to establish and administer performance awards programs that best support and enhance agency and national goals and meet employee recognition needs.

§ 430.504 Funding and payment. [Reserved]

§ 430.505 Responsibilities of the Office of Personnel Management.

In accordance with Subpart A of this part, OPM shall review and approve the agency performance awards component of the Performance Management Plan, and any proposed plan revisions which have an impact on how an agency meets statutory and regulatory requirements.

§ 430.506 Agency responsibilities.

(a) The head of each agency shall, within existing appropriated funds, establish a performance awards program as a component of the Performance Management System.

(b) The head of each agency shall submit to OPM—

(1) A performance awards plan, as part of the Performance Management Plan, which includes provisions for determining the agency performance awards fund, and the method for determining projected expenditures, for review and approval as provided in Subpart A of this part;

(2) Proposed plan revisions for review and approval as required in Subpart A of this part;

(3) All recommendations for performance awards in excess of $10,000 up to $25,000 for review and approval;

(4) At the beginning of each fiscal year, the estimated performance awards budget, including the funding level used; and

(5) An annual report on performance awards activities for the past fiscal year.

PART 431—[REMOVED]

14. Part 431 is removed.

PART 451—INCENTIVE AWARDS

15. The heading for Part 451 is revised as set out above and the authority citation for Part 451 is revised to read as follows:

Authority: 5 U.S.C. 4506 and 5407.

16. In Part 451, Subpart B is redesignated as Subpart A and revised to read as follows:

Subpart A—Agency Superior Accomplishment Awards

Sec.

§ 451.101 Authority and coverage.

(a) This subpart contains the regulatory requirements of the Office of Personnel Management (OPM) for establishing and conducting the Superior Accomplishment Awards component of the Performance Management System under the authority of title 5, United States Code, chapters 43, 45, and 54.

(b) This subpart applies to employees as defined by section 2105 of title 5, United States Code. Employees covered by the Performance Management and Recognition System under chapter 54 of title 5, United States Code, are covered by the provisions of this subpart.

(c) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 451.102 Purpose.

Superior accomplishment awards are designed to improve Government efficiency, economy and effectiveness by motivating employees to increase productivity and creativity by rewarding their efforts which benefit the Government.

§ 451.103 Definitions.

"Award" or "superior accomplishment award" means a monetary or non-monetary award for a contribution resulting in tangible benefits or savings and/or intangible benefits to the Government.

"Contribution" means an accomplishment achieved through an individual or group effort in the form of a suggestion, an invention or a special act or service in the public interest connected with or related to official employment, which contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork.

"Intangible benefits" means benefits to the Government which cannot be measured in terms of dollar savings.

"Non-monetary award" means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

"Performance Management Plan" means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals. The Performance Management Plan, which includes the superior accomplishment awards plan, must be submitted to OPM for review and approval as required in Part 430, Subpart A and § 451.107 of this subpart.

"Special act or service" means a contribution or accomplishment in the public interest which is:

(a) A non-recurring contribution either within or outside of job responsibilities;

(b) A scientific achievement; or

(c) An act of heroism.

"Superior accomplishment award": see "Award".

"Tangible benefits" means benefits or savings to the Government that can be measured in terms of dollars.

§ 451.104 Policy.

(a) The Office of Personnel Management encourages agencies to make maximum use of their authorities under chapters 45 and 54 of title 5, United States Code to:

(1) Establish and administer superior accomplishment awards programs which best support and enhance agency and national goals, and meet employee recognition needs; and

(2) Provide for adequate funds to provide for payment of awards, and staffing and support services to assure prompt action on awards recommendations, and effective promotion and publicity of the program.

(b) Superior accomplishment awards programs shall provide for:

(1) The granting of recognition commensurate with the value of the contribution to the Government; and

(2) Obtaining maximum benefits for the Government, whenever possible, by considering the applicability of employee contributions throughout Government.

(c) An award under this subpart may be granted alone or in addition to a performance award granted under Parts 430, Subpart E, and 540 of this chapter, or a quality step increase granted under Part 531, Subpart E.

(d) An award under this part shall not be used as a substitute for other personnel actions, or as a substitute for pay.

(e) To be awarded under this subpart, a contribution must:

(1) Have been made while the contributor was a Government employee;

(2) Be supported by a written justification separate from the employee's rating of record; and

(3) Be approved at a management level higher than that of the individual who recommended use of the suggestion or invention, or recommended the award.

(f) Acceptance of a monetary award consitutes an agreement that the use by the Government of the idea, method, or device for which the award is paid does

not form the basis of a further claim against the Government.

(g) Awards under this part shall be documented in the Official Personnel Folder to reflect the nature of the award, including the amount of award.

(h) Due weight shall be given to an award under this part when rating and ranking an employee for promotion as provided in 5 U.S.C. 3362.

(i) Agencies shall assure that superior accomplishment awards programs are effectively implemented by providing appropriate training and information to supervisors and employees on the program, and establishing methods and procedures to evaluate periodically the effectiveness of the program and implement improvements as needed.

(j) Superior accomplishment awards shall not be mandatory.

§ 451.105 Payment.

(a) An award under this subpart is in addition to regular pay and does not increase an employee's base pay. The award is subject to the withholding of income taxes.

(b) When an award is approved for an employee of another agency, the benefiting agency shall make arrangements to transfer funds to the employing agency to cover the award. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs and pay the award.

(c) When an award is approved for a member of the armed forces for a suggestion, invention, or scientific achievement, arrangements shall be made to transfer funds to the agency having jurisdiction over the member in accordance with Executive Order 11438, "Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces".

§ 451.106 Responsibilities of the Office of Personnel Management.

(a) OPM shall review and approve the agency superior accomplishment awards component of the Performance Management Plan, and any changes to the plan that modify any element of the agency's system that is included in a Performance Management Plan Checklist, as required in Part 430, Subpart A, of this chapter.

(b) OPM shall review and approve or disapprove all recommendations for agency awards under this subpart in excess of $10,000 up to $25,000.

§ 451.107 Agency responsibilities.

(a) The head of each agency shall submit to OPM:

(1) The superior accomplishment awards component of the Performance Management Plan for review and approval as required in Part 430, Subpart A;

(2) Any changes to the plan that modify any element of the agency's system that is included in a Performance Management Plan Checklist as required in Part 430, Subpart A, for review and approval;

(3) Award recommendations in excess of $10,000 up to $25,000; and

(4) An annual report on program activities and expenditures for the past fiscal year and the amount budgeted for superior accomplishment awards for the current fiscal year.

(b) Agencies shall give consideration to accomplishment and adopted ideas for wider application both within the agency and Government-wide, and provide for prompt referral when appropriate.

17. In Part 451, a new Subpart B is added to read as follows:

Subpart B—Presidential Awards

Sec.
451.201 Authority and coverage.
451.202 Payment.
451.203 Responsibilities of the Office of Personnel Management.

§ 451.201 Authority and coverage.

(a) Under title 5, United States Code, chapters 45 and 54, the President may pay a cash award to and incur necessary expenses for the honorary recognition of an employee who:

(1) By his/her suggestion, invention or other personal effort contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or

(2) Performs an exceptionally meritorious special act or service in the public interest in connection with or related to official employment.

(b) During any fiscal year, the President may, subject to the provisions of 5 U.S.C. 4507, award to any Senior Executive career appointee recommended by OPM the rank of—

(1) Meritorious Executive, for sustained accomplishment, or

(2) Distinguished Executive, for sustained extraordinary accomplishment.

(c) Except as provided in paragraph (b) of this section, this subpart applies to employees as defined by section 2105 of title 5, United States Code. Employees covered by the Performance Management and Recognition System under title 5, United States Code, chapter 54 are covered by the provisions of this subpart.

(d) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 451.202 Payment.

(a) A Presidential award is paid by the agency(ies) primarily benefiting from the employee contribution.

(b) A Presidential award may be in addition to an agency award under Subpart A of this part.

§ 451.203 Responsibilities of the Office of Personnel Management.

(a) The Office of Personnel Management shall review annually agency recommendations for Presidential Rank Awards for career appointees of the Senior Executive Service under section 4507 of title 5, United States Code, and recommend to the President which of those career appointees should receive awards.

(b) The Office of Personnel Management, in accordance with Executive Order 10717, as amended, shall review agency recommendations for the President's Award for Distinguished Federal Civilian Service and recommend to the President which career employees should receive this award.

(c) Under Executive Order 11228, section 2, the Office of Personnel Management has the authority to determine the activity or activities primarily benefiting from any suggestion, invention, or other contribution which forms the basis for a Presidential award under 5 U.S.C. 4504 and 5407.

18. In Part 451, Subpart C is reserved, as follows:

Subpart C—Productivity Gainsharing Programs [Reserved]

PART 531—PAY UNDER THE GENERAL SCHEDULE

19. The heading for Part 531 is revised as set forth above and the authority citation for Part 531, Subpart D, is revised to read as follows:

Authority: 5 U.S.C. 5301, 5335, and 5338 and E.O. 11721 as amended, section 402, unless otherwise noted.

20. Section 531.401 is revised to read as follows:

§ 531.401 Principal authorities.

The following are the principal authorities for the regulations in this subpart:

(a) Section 2301(b)(3) of title 5, United States Code, provides in part that "appropriate incentives and recognition should be provided for excellence in performance."

(b) Section 5301(a)(2) of title 5, United States Code, provides that "pay distinctions be maintained in keeping with work and performance distinctions."

(c) Section 402 of E.O. 11721, as amended, provides that "The Civil Sevice Commission (Office of Personnel Management) shall issue such regulations and standards as may be necessary to ensure that only those employees whose work is of an acceptable level of competence receive periodic step-increases under the provisions of section 5335 of title 5, United States Code."

21. Section 531. 403 is amended by revising the terms "acceptable level of competence" and "critical element", to read as follows:

§ 531.403 Definitions.

In this subpart—

"Acceptable level of competence" means fully successful performance by an employee of the duties and responsibilities of his or her assigned position which warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position, subject to the requirements of § 531.404 of this subpart.

* * * * *

"Critical Element" has the meaning given that term in § 430.203 of this chapter.

* * * * *

22. Section 531.404 is revised to read as follows:

§ 531.404 Earning within-grade increase.

An employee paid at less than step 10 of the grade of his or her position shall earn advancement in pay to the next higher step of that grade upon meeting the following three requirements established by law:

(a) The employee's performance of the duties and responsibilities of his or her assigned position must be at an acceptable level of competence, as defined in this subpart by authority of Section 402 of E.O. 11721, as amended. To be determined at an acceptable level of competence, the employee's most recent rating of record as defined in the agency Performance Management Plan, must be at least level 3 ("Fully Successful").

(1) When a within-grade increase decision is not consistent with the employee's most recent rating of record a more current rating of record must be prepared.

(2) The rating of record used as the basis for an acceptable level of competence determinatio for a within-grade increase must have been assigned no earlier than the most recently completed appraisal period.

(b) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position.

(c) The employee must not have received an equivalent increase during the waiting period.

23. Sections 531.408 (b) and (c) are revised to read as follows:

§ 531.408 Communication of performance requirements.

* * * * *

(b) Employees covered by an appraisal system established under Part 430, Subpart B of this chapter shall be informed of the specific performance requirements that constitute an acceptable level of competence within the time frame and by means of communication of performance standards established under Part 430, Subpart B of this chapter.

(c) Employees not covered by an appraisal system established under Part 430, Subpart B of this chapter shall be informed, under procedures established by the head of the agency, of the specific requirements for performance at an acceptable level of competence within a reasonable time after initial appointment or permanent change in position.

24. In § 531.409, paragraphs (b), (c), (d), and (e)(2)(i) are revised to read as follows:

§ 531.409 Acceptable level of competence determinations.

* * * * *

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current rating of record made under Part 430 of this chapter. For those agencies not covered by 5 U.S.C. chapter 43 and for employees in positions excluded from 5 U.S.C. 4301, an acceptable level of competence determination shall be based on minimal performance appraisal requirements issued by OPM. If an employee has been reduced in grade because of "Unacceptable" performance and has served in one position at the lower grade for at least the minimum appraisal period established by the agency, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.

(c) *Delay in determination.* (1) An acceptable level of competence determination must be delayed when either of the following applies:

(i) An employee has not had the minimum period of time established by the agency to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been given a performance rating in any position within 90 days before the end of the waiting period; or

(ii) An employee is reduced in grade because of unacceptable performance to a position in which he or she is eligible for a within-grade increase or will become eligible within the minimum period of time established by the agency to demonstrate acceptable performance.

(2) When an acceptable level of competence determination has been delayed under this subpart:

(i) The employee shall be informed that his or her determination is postponed and the rating period extended and shall be told of the specific requirements for performance at an acceptable level of competence.

(ii) An acceptable level of competence determination shall then be made upon completion of the minimum appraisal period established by the agency performance appraisal plan and shall be based on the employee's rating of record completed at the end of the appraisal period.

(iii) If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the within-grade increase will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

(d) *Waiver of requirement for determination.* An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum appraisal period under an applicable agency performance appraisal system during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

(1) Because of absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart;

(2) Because of paid leave;

(3) Because the employee received service credit under the back pay provisions of subpart H of Part 550 of this chapter;

(4) Because of details to another agency or employer for which no rating has been prepared; or

(5) Because of long-term training.

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level

of competence had the employee performed the duties of his or her position of record for the minimum appraisal period under the applicable agency performance appraisal system.

* * * * *

(e) Notice of determination.

(2) * * *

(i) Set forth the reasons for any negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under § 531.411 of this subpart.

* * * * *

25. Section 531.411 is revised to read as follows:

§ 531.411 Continuing evaluation after withholding a within-grade increase.

When a within-grade increase has been withheld, an agency may, at any time thereafter, prepare a new rating of record for the employee and grant the within-grade increase when it determines that he or she has demonstrated sustained performance at an acceptable level of competence. However, the agency shall determine whether the employee's performance is at an acceptable level of competence after no more than 52 calendar weeks following the original eligibility date for the within-grade increase and, for as long as the within-grade increase continues to be denied, determinations will be made after no longer than each 52 calendar weeks.

Subpart E—Quality Step Increases

26. The authority citation for Part 531, Subpart E, is revised to read as follows: Authority: 5 U.S.C. 5336 and E.O. 11721, as amended.

27. In Subpart E, §§ 531.503 and 531.504 are revised to read as follows:

* * * * *

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to an employee who receives a rating of record at level 5 (Outstanding), as defined in Part 430, Subpart B, of this chapter.

28. Sections 531.505 through 531.507 are revised to read as follows:

§ 531.505 Restrictions on granting quality step increases.

As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

§ 531.506 Effective date of quality step increase.

A determination to grant a quality step increase should be made as soon as practicable after a rating of record is approved. The quality step increase should be made effective as soon as possible after it is approved.

§ 531.507 Agency plans for granting quality step increases.

Each agency shall include a plan for granting quality step increases in the agency's Performance Management Plan, as required by Part 430, Subpart A of this chapter. The Plan shall—

(a) Be as simple as practicable;

(b) Provide for delegation of authority to grant quality step increases to the lowest practicable level of management;

(c) Be reviewed and approved in accordance with the requirements in Part 430, Subpart A of this chapter;

(d) Provide for informing employees, at least annually, of the number of quality step increases granted in the agency by grade level; and

(e) Provide for appropriate training and information to all employees on QSI's and establish methods and procedures to evaluate periodically the effectiveness of the use of QSI's, and to implement improvements as needed.

29. In Part 531, Subpart F is removed.

30. In Part 532, Subpart H is removed.

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

31. The authority for Part 771 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1943–1948 Comp., pages 606–624, E.O. 11222, 3 CFR 1964–1969 Comp., page 306.

32. In § 771.206, paragraph (c)(3) is removed, and paragraph (c)(1)(x) is revised, to read as follows:

Subpart B—General

§ 771.206 Exclusions.

* * * * *

(c) Matters excluded.

(1) * * *

(x) The granting of or failure to grant or the amount of an award granted under Part 430, Subpart E; or the granting of or failure to grant or the amount of an award granted under Part 451; or the adoption of or failure to adopt an employee suggestion or invention under Part 451; or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under 4507 of title 5, United States Code and Part 451, Subpart B of this chapter.

* * * * *

[FR Doc. 86–5106 Filed 3–10–86; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293 and 430

Performance Management System: Performance Awards, Recordkeeping, Performance Appraisal Administration, etc.

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations on the Performance Management System (PMS) in conjunction with the final rules published elsewhere in today's **Federal Register.** In response to agency requests, these proposed regulations contain provisions to make the PMS performance awards, recordkeeping, and performance appraisal administration more consistent with the regulations recently established for the Performance Management and Recognition System (PMRS). Because these provisions are substantially different from the proposed PMS regulations, OPM is publishing them for public comment.

DATE: To be considered, comments must be received no later than April 10, 1986.

ADDRESS: Send or deliver written comments to: John W. Fossum, Assistant Director for Performance Management, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street NW., Room 7520, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allen B. Levan (202) 632-5653.

SUPPLEMENTARY INFORMATION:

On August 30, 1985, at 50 FR 35505-35506 and 50 FR 35513-35530, OPM issued proposed regulations on the Performance Management System. Final regulations on most of the PMS provisions are published elsewhere in today's **Federal Register.** In response to the overwhelming majority of the commenters' suggestions, OPM has revised the regulations to make them as consistent as possible with PMRS regulations. These proposed regulations contain further provisions that would enhance consistency with PMRS, but are substantially different from the proposed regulations. OPM is providing a 30-day period for interested parties to comment on these changes, so that agencies will have ample time to prepare and implement complete Performance Management Plans for appraising and rewarding all employees' performance.

Proposed Changes

Following is a detailed outline of the proposed changes to the regulations, identifying each issue, a summary of any comments received on the issue in the proposed regulations, and a discussion of OPM rationale for the proposed changes. The comments reflected in these discussions were received from 29 agencies, four labor organizations, two members of Congress, one professional association, and one individual commenter. The issues are listed in sequential order as they appeared in the proposed regulations, with each "Proposed Change" paragraph indicating the proposed new location of the regulation on the issue.

1. *Issue:* Filing and Transfer of Performance Records (Part 293, Subpart C).

Summary of Comments: Fifteen agencies and one professional organization commented on the proposed regulations requiring the filing and transfer of performance records with employees' Official Personnel Folders (OPF's). Twelve of the agencies suggest that performance records filing systems be the same for all employees as they currently are for PMRS employees; i.e., that agencies be given the option to file performance records for all employees in either the OPF or the Employee Performance File (EPF) system. If only one system must be used, four agencies prefer to use the EPF, while three agencies prefer to use the OPF. Two agencies object to filing duplicate records.

Discussion: OPM agrees that agencies should have the option of filing performance ratings of record and the performance plans on which they are based, in either the OPF or the EPF, provided that the ratings of record for 3 years and the performance plan on which the most recent rating was based are transferred in the OPF when the employee leaves his/her position. That change is provided in the final regulations, published elsewhere in today's **Federal Register** at Subpart D of Part 293, which provides for the Employee Performance File System.

Proposed Change: The proposed regulation would revise Part 293, Subpart C, which prescribes requirements for the maintenance and content of the OPF. The proposed regulation is a technical change that would bring the OPF subpart into conformance with the EPF subpart, indicating that performance ratings of records, and the performance plans on which they are based, may be filed in either the OPF or the EPF.

Additionally, due to a change in Part 430 regulations, agencies are required to prepare and forward a summary rating when the employee changes positions. A provision would be added to Part 293 to indicate that agencies must forward the summary rating in the OPF, along with ratings of record as described in the discussion above.

2. *Issue:* Performance Appraisal Advisory Committees.

Summary of Comments: One labor organization objects to the requirements for higher level management review, and to the restriction on communicating ratings of record prior to higher level management approval, stating that these requirements would result in the clandestine establishment of bell curves. One labor organization says that employees should be informed of how their performance plans and ratings reflect employee contributions to the accomplishment of organizational objectives. One agency thinks that the PMS and PMRS regulations should not be different in appraisal procedures. One agency states that the regulations should be consistent in "process". One agency thinks that creating procedures parallel to the PMRS would contribute to ease of understanding of the regulations.

Discussion: One mechanism in the PMRS regulations that promotes the equitable application of performance standards, guards against the establishment of bell curves, and helps assure that individual performance standards reflect the goals of the organization is the Performance Standards Review Boards. These Boards, through representation by the covered employees themselves, provide an opportunity for the employees to obtain an overview of the performance standards and performance ratings and to make recommendations for improving performance appraisal in the agency.

Proposed Change: The proposed regulations provide that a similar opportunity be created for PMS employees by providing for the establishment of Performance Appraisal Advisory Committees (§ 430.407). The Committees would have advisory functions similar to those provided to Performance Standards Review Boards.

3. *Issue:* General Comments on Part 531, Subpart F.

Summary of Comments: Two agencies suggest that, to preclude confusion and maintain consistency for supervisors and employees, performance and cash awards programs should be as consistent and equitable as possible for both populations.

Discussion: OPM agrees that wherever possible the performance awards systems for employees under the General Schedule (GS), Prevailing Rate System, and PMRS should be as consistent as possible. Congressional intent for performance management has most recently and clearly been demonstrated in the history of the legislation creating the PMRS. Consistency among the systems would foster ease of administration, reduce confusion and clearly support pay for performance under the Performance Management umbrella, while at the same time achieving equity among the different systems covering all employees. OPM believes that consistency and equity among these systems can be achieved while meeting all statutory requirements provided for the different groups of employees.

Proposed Change: Because provisions for funding and payment of performance awards parallel to PMRS have not been previously proposed for public comment, OPM is requesting comments on those provisions, as outlined below.

4. *Issue:* Reduction of Performance Awards Amounts, Limiting Total Awards to 20 Percent of Base Pay (§ 531.605).

Summary of Comments: Two agencies recommend allowing higher awards, consistent with the PMRS provisions which allow for performance awards up to 20 percent of base pay for unusually outstanding performance. One agency objects to reducing award amounts because it is perceived as unfair, and an administrative burden for agencies. One agency suggests that within-grade increases be excluded when determining the 20 percent-of-base-pay limit. One agency thinks that an employee should not receive both a quality step increase and a performance award in the same 1-year period.

Discussion: OPM agrees that the "discounting" features of the performance awards program for GS and WG are inconsistent with performance awards provisions of the PMRS, and therefore, create inequity between the two systems.

Proposed Change: The language previously contained in § 531.6.5(b)(3) has been removed. New language would be added in § 430.504 (e)(1) and (e)(2) providing discretionary authority to consider recent promotions in determining the amount of a performance award. This new language would parallel the PMRS regulations.

5. *Issue:* Level of Performance Required for Performance Award (§ 531.606(a)(4)).

Summary of Comments: One agency thinks that OPM should permit performance awards for employees who receive a "Fully Successful" summary rating, as permitted for PMRS employees. One agency suggests adding the requirement that, when an employee receives a performance award for performance of "Exceeds Fully Successful" on an element, the employee's summary rating must be at least "Fully Successful". Another agency suggests clarifying that the elements for which the employee receives a performance award must be critical elements, and that the rating on which a performance award is based must be a current rating.

Discussion: OPM believes that in order to achieve an effective pay-for-performance program which is perceived by employees to be both fair and equitable, awards amounts must be commensurate with the level of performance sustained by employees as evidenced by their current rating of record. The higher the level of performance attained, the larger the reward should be. To provide for consistency and equity, employees covered by Part 430, Subpart E, should have the same opportunity for recognition of their high level performance as those who supervise them.

Proposed Change: Performance awards provisions contained in Part 430, Subpart E, would parallel the performance awards provisions of the PMRS and would not prohibit awards for performance rated "Fully Successful". Performance awards under the subpart would be granted only based on a current rating of record as is provided in PMRS.

6. *Issue:* Prohibition on Mandatory Performance Awards and Funding of Performance Awards (§ 531.606(b) and § 531.609).

Summary of Comments: One agency thinks that awards should be mandatory for General Schedule and prevailing rate employees who receive "Outstanding" ratings. One agency comments that it has a union contract requiring mandatory performance awards, and would be unable to implement this provision until the contract expires. Two agencies point out that the paragraphs cross-referenced in this provision (§§ 430.204(t) and 431.204(w) of the proposed regulations) do not mandate awards, and request that OPM clarify this language. Two labor organizations suggest that OPM delete the prohibition on mandatory awards, and one organization suggests that, on the contrary, awards should be made mandatory, to provide incentive to employees.

One agency recommends that OPM regulate funding levels for these awards, consistent with the PMRS regulations on performance awards. Three agencies request clarification of the provisions for determining funding for performance awards; one suggests using the same factors prescribed in the PMRS regulations for determining the funding level.

Discussion: OPM agrees that, within existing appropriated funds, there should be consistency with the provisions of the PMRS which provide for mandatory awards for overall outstanding performance. This would provide for equitable recognition of "Outstanding" performance by employees as is now provided for supervisors, and would support the pay-for-performance concept.

In line with agency comments to parallel the PMRS, OPM agrees that agencies should establish funding levels for performance awards for GS and WG employees within existing appropriated funds, thereby providing for consistency and equity between the two systems.

Proposed Change: Provisions in the new Part 430, Subpart E, would provide for performance awards that are consistent with those granted to employees covered by the PMRS. A new section on "Funding and Payment" (§ 430.504) would be added to provide that agencies should establish annual funding, within existing appropriated funds, and should expend these funds for performance awards. Section 430.504 would provide that agencies should pay performance awards of at least 2 percent of base pay for employees receiving a rating of record of level 5 ("Outstanding").

7. *Issue:* Payment of Performance Awards (§ 531.607).

Summary of Comments: One agency suggests that OPM add a paragraph to this provision, indicating that an employee cannot appeal non-payment of a performance award, similar to the provision on PMRS performance awards.

Discussion: Because of the provision to pay awards within the limit of existing appropriations, OPM agrees that non-payment of a performance award should not be appealable.

Proposed Change: Language has been proposed in § 430.504(g) stating that failure of an agency to pay an award may not be appealed.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 430

Administrative practice and procedure, Decorations, Medals, Awards, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office of Personnel Management proposes to amend Title 5, Code of Federal Regulations, as follows:

PART 293—PERSONNEL RECORDS

1. The authority citation for Part 293 continues to read as follows:

Authority: 5 U.S.C. 552, 4302a, and 4315; E.O. 12107 (December 28, 1978); 3 CFR 1954–1958 Comp.; 5 U.S.C. 1103, 1104 and 1302; 5 CFR 7.2; E.O. 9830; 3 CFR 1943–1948 Comp.

2. In Subparf C, § 293.304 is revised to read as follows:

Subpart C—Official Personnel Folder.

* * * * *

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. Performance ratings of record, including the performance plans on which they were based, may also be maintained in the Official Personnel Folder. The folder shall also contain long-term records affecting the employee's status and service as required by OPM's instructions and as designated in FPM Supplement 293–31.

3. Section 293.306(b) is revised to read as follows:

§ 293.306 Use of existing folders upon transfer or reemployment.

* * * * *

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the folder, except for performance ratings of record and the performance plan on which the most recent rating was based;

(2) Transfer performance ratings of record and the performance plan on which the most recent rating was based from the Employee Performance File of non-SES employees to their Official Personnel Folder, if the ratings and plans are not maintained by the agency in the Official Personnel Folder;

(3) Add the employee's summary rating, prepared when the employee changes positions, as provided in Part 430; and

(4) Ensure that all permanent documents of the folder are complete, correct, and present in the folder in accordance with FPM Supplement 293–31.

PART 430—PERFORMANCE MANAGEMENT

4. The authority citation for Part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

5. Section 430.207 is added, to read as follows:

§ 430.207 Performance appraisal advisory committees.

(a) Each agency shall establish one or more performance appraisal advisory committees. Each committee will consist of at least six members chosen by the agency head or his or her designee. One-half of the committee must be composed of employees covered by the PMS and in the competitive service. The chair of the committee will be chosen by the head of the agency or his or her designee.

(b) Agency Performance Management Plans shall set forth the composition and operating procedures for the committee(s). Committees shall become operational upon OPM's approval of the agency's Performance Management Plan and shall report to their respective agency heads or designees at least annually.

(c) The committee(s) shall review representative performance plans and report to the head of the agency or his or her designee at least annually on the quality of the plans including the difficulty of the performance standards. The committee shall advise the head of the agency or his or her designee on ways to improve performance plans but shall have no authority to approve or modify performance plans. Such reviews shall be conducted after performance plans have been approved and communicated to employees.

(d) Committees shall review the ratings and make recommendations to the head of the agency or his or her designee regarding improving the application of standards but shall not recommend any distribution of ratings. Committees shall have no authority to approve or modify performance ratings. Such reviews shall be conducted after ratings of record have been approved and communicated to employees.

(e) Committees are also responsible for studying the feasibility of organizational awards.

6. Section 430.504 is added, to read as follows:

§ 430.504 Funding and payment.

Each agency will, within existing appropriated funds, fund and pay performance awards as follows:

(a)(1) At the beginning of each fiscal year, each agency shall determine the amount of money available for performance awards for that fiscal year.

(i) Each agency should pay a minimum of .75 percent of the estimated aggregate amount of covered employees' basic pay for that fiscal year; and

(ii) An agency should not spend more for performance awards than 1.5 percent of the estimated aggregate amount of covered employees' basic pay for any fiscal year.

(2) Agencies having 20 or fewer covered employees, that have determined that the funding under paragraph (a)(1) of this section is insufficient to provide an effective performance awards distribution, must submit to OPM, at the beginning of each fiscal year, a higher level of funding for performance awards, which should not exceed 10 percent of the aggregate amount of basic pay for covered employees in that fiscal year. The submission shall be in writing and shall include the level of funding desired, and the reasons for and sufficient data to support funding at the higher level. Sufficient data will include, at a mimimum:

(i) Number of employees;

(ii) Distribution of ratings;

(iii) Awards distribution methodology;

(iv) Awards amounts that would be payable under paragraph (a)(1) of this section; and

(v) Award amounts that will be payable under the proposed level of funding.

(3) In determining the estimated aggregate amount of covered employees' basic pay for a fiscal year, consideration should be given to the following factors:

(i) The number of employees covered during the previous year;

(ii) The aggregate rates of basic pay for those employees;

(iii) Significant changes in the number of covered employees expected in the current fiscal year, such as by attrition,

reorganization, expansion, or reduction in force;

(iv) The distribution of performance ratings in the agency; and

(v) The amount of the general increases under 5 U.S.C. 5303 and 5 U.S.C. 5305, within-grade increases under 5 U.S.C. 5335, and quality step increases under 5 U.S.C. 5336, that will be paid to covered employees in the current fiscal year.

(4) Funds for incentive awards under Part 451 of this chapter shall not be included in the performance awards fund, inasmuch as incentive awards are sperarate from performance awards.

(b)(1) Performance awards shall be paid at least annually, on a date or within a time period established by the agency, except that agencies should pay these awards as close to the end of the employee's performance appraisal period as the agency deems practicable. This does not preclude agencies from granting Superior Accomplishment Awards under Part 451, Subpart A of this chapter at any time during the appraisal period.

(2) An employee is eligible to receive a performance award if he/she is in a position covered by this subpart on the last day of the current performance appraisal period for which performance awards determinations are being made.

(c)(1) Performance awards must be based on an employee's rating of record for the current appraisal period for which performance awards are being made. An employee with a rating of level 5 ("Outstanding") should receive a performance award of at least 2 percent of base pay, but not more than 10 percent in any given year. Based on an agency head's determination that an employee has performed at an unusually outstanding level, the agency may grant a performance award not to exceed 20 percent of base pay.

(2) An employee with a rating at level 4 should receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance awards budget, any award granted to employees in the same grade rated at level 4 must be less than any award received by employees related at level 5.

(3) An employee with a rating at level 3 may receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance awards budget, any award granted to employees in the same grade rated at level 3 must be less than any award received by employees rated at level 4.

(d) If an agency determines the amount of performance awards using a percentage of base pay, the rate of basic pay on the last day of the performance appraisal period for which awards are being paid must be used to calculate the amount of the awards.

(e)(1) In granting performance awards as provided in paragraph (c) of this section, if an employee has been promoted within the preceding year, the agency head may take this into account in determining the amount of the employee's performance award that otherwise would have been specified in the agency's Performance Management Plan.

(2) Performance awards that have been adjusted because of promotions will not be considered in meeting the requirements of paragraphs (c)(2) and (c)(3) of this section for smaller awards at a lower rating level.

(f)(1) Except as provided in paragraph (f)(2) of this section, when an agency cannot prepare a rating of record for an employee when scheduled in the Performance Management Plan, the employee's rating period must be extended so that the minimum appraisal period is provided, after which a rating of record shall be prepared as required in § 430.206(e) and used as the basis for granting a performance award in accordance with the Performance Management Plan.

(2)(i) The agency head will determine whether an employee will be granted a performance award when an agency cannot prepare a rating of record for an employee when specified in the Performance Management Plan because the employee has not served during the agency appraisal period for the minimum appraisal period; and

(A) Is on long-term training; or

(B) Is on an approved absence that would be creditable service under § 531.406 of this chapter; or

(C) In an agency having established an annual appraisal period for all covered employees, is on leave without pay (LWOP) for a period of time such that the employee is not in a pay status during the agency's appraisal period for at least the minimum appraisal period; or

(D) Is newly appointed to the Government within 90 days of the end of the agency's appraisal period (the agency having established an annual appraisal period for all covered employees). For purposes of this paragraph:

(1) A reinstated employee is considered to be a newly appointed employee;

(2) An employee reemployed under Part 351, Subpart J, of this chapter, is not considered to be a newly appointed employee; and

(3) An employee receiving a new appointment without a break in service of one or more workdays is not considered to be a newly appointed employee.

(ii) If an award is granted, the following procedures will be used to determine the award amount:

(A) The employee's rating of record under 5 U.S.C. 4302 or 4302a is extended and the appropriate award is granted, if that rating was given no earlier than the previous rating period; or

(B) If there is no rating of record that can be extended, the employee receives a performance award equivalent to that granted for a level 3 (Fully Successful) rating, as specified in the agency's Performance Management Plan.

(g) Failure of an agency to pay a performance award under this subpart may not be appealed.

(h) Awards paid under this subpart do not increase the rate of basic pay and are subject to the withholding of income taxes.

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March 11, 1986

Part III

Department of Agriculture

Agricultural Stabilization and Conservation Service
Commodity Credit Corporation

7 CFR Parts 713 et al.

Food Security Act; Implementation; Interim Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 795, 796, 1421, 1425, and 1427

Food Security Act; Implementation

AGENCY: Commodity Credit Corporation and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The Food Security Act of 1985 (the "Act"), which was enacted on December 23, 1985, amended the Agricultural Act of 1949 to authorize price support, payment, and production adjustment programs for the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat. This interim rule amends the regulations found at 7 CFR Parts 713 and 770 to set forth certain terms and conditions of these programs. The regulations found at 7 CFR Part 796 are amended by this interim rule to incorporate provisions of the Act with respect to the denial of program benefits to persons convicted of violations of Federal and State controlled substance statutes. The regulations set forth at 7 CFR Parts 795, 1421, 1425, and 1427 which relate to payment limitation, price support loans, and cooperative marketing associations also are amended to conform to the provisions of the Act, to delete references to obsolete provisions, and to improve the operation of these programs for the 1986 and subsequent crop years. Since numerous changes are made to 7 CFR Parts 713, 770, 796, and 1425, the interim rule sets forth the entire provisions of these parts.

EFFECTIVE DATE: March 6, 1986. Comments must be received on or before April 10, 1986, in order to be assured of consideration.

Submit Comments To: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2145, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Thomas Von Garlem, Assistant Deputy Administrator, State and County Operations, ASCS, P.O. Box 2145, Washington, DC 20013 (202) 447-6761.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Impact Analyses are being prepared with respect to the programs for the 1986 crops of wheat, feed grains, cotton, and rice. Copies of the analyses will be available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, Room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Dairy Indemnity Payments—10.053; Emergency Conservation Program—10.054; Feed Grain Production Stabilization—10.055; Storage Facilities Equipment Loans—10.056; Wheat Production Stabilization—10.058; National Wool Act Payment—10.059; Beekeeper Indemnity Payments—10.060; Water Bank Program—10.062; Agricultural Conservation Program—10.063; Forestry Incentives Programs—10.064; Rice Production Stabilization—10.065; Emergency Feed Program—10.066; Grain Reserve Program—10.067; Rural Clean Water Program—10.068, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560-0030, 0560-0040, 0560-0071, 0560-0091, 0560-0092, 0560-0096, and 0560-0650 have been assigned.

Since producers participating in the programs authorized by 7 CFR Parts 713, 770, 795, 796, 1421, 1425, and 1427 have already planted or are preparing to plant the crops affected by this interim rule and approved cooperatives will be obtaining price support loans and purchase agreements for their members with respect to the 1986 crop year, it has been determined that this interim rule shall be effective upon filing with the **Federal Register.** However, comments are requested with respect to this interim rule and such comments shall be considered in developing the final rule.

Statutory Background—Food Security Act of 1985

The Act added sections 101A, 103A, 105C, and 107D to the Agricultural Act of 1949, as amended (the "1949 Act"), effective for the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat, respectively. The Act also amended section 103(h), 107C, and 406, added sections 107E and 107F and added a new title V to the 1949 Act which pertain to the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat. Section 801 of the Act amended section 201 of the 1949 Act to provide discretionary marketing loans with respect to the 1986 through 1990 crops of soybeans. Section 310 of the Act amended sections 332, 333, 334, 335, 336, and 338 of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), with respect to the 1986 crop of wheat. The Act further suspended sections 331, 339, 379b, and 379c of the 1938 Act with respect to the 1986 through 1990 crops of wheat. The Act also suspended sections 342, 343, 344, 345, 346, and 377 of the 1939 Act, sections 103(a) and 203 of the 1949 Act with respect to the 1986 through 1990 crops of upland cotton, and section 105 of the 1949 Act with respect to the 1986 through 1990 crops of feed grains.

Section 1001 of the Act provides that the total amount of payments, excluding disaster payments, that a person may receive in accordance with one or more of the annual programs authorized for wheat, feed grain, rice, and upland and extra long staple cotton may not exceed $50,000.

The total amount of disaster payments which a person may receive under such programs is $100,000. Section 1764 of the

Act provides that, if a person has been convicted under Federal or State law of planting, cultivation, growing, producing, harvesting, or storing a controlled substance in any crop year, such a person shall be ineligible for specified program benefits for that crop year and the four succeeding crop years.

This interim rule amends 7 CFR Parts 713, 770, 795, 796, 1421, 1425, and 1427 to set forth a number of terms and conditions with which producers must comply in order to be eligible for benefits with respect to various commodity programs for the 1986 and subsequent crops of upland cotton, feed grains, and wheat, and the 1985 and subsequent crops of rice. A summary of the significant provisions authorized for these crops is set forth in Section I, Statutory Basis. Section II, Changed Provisions, sets forth an explanation of the changes made by this interim rule in each part as compared to the regulations in effect with respect to the 1985 crop year.

I. Statutory Basis

A. The Food Security Act of 1985

(1) *Price support*—The Act provides that, with respect to the 1986 through 1990 crop years, price support shall be made available to producers of rice, upland cotton, feed grains, and wheat by means of nonrecourse loans and/or purchase agreements. The general terms and conditions for price support loans and purchase agreements are found generally in 7 CFR Parts 1421 and 1427. The loan and purchase rates for each such crop are determined annually by the Secretary of Agriculture in accordance with applicable statutory provisions. These statutory provisions further provide that the Secretary is authorized to adjust the loan and purchase rates for wheat and feed grains to maintain a competitive market position for such crop. For the 1986 through 1990 crops, the Secretary is authorized for feed grains and wheat, and is required for upland cotton and rice, to permit producers to repay such a loan at a reduced rate which reflects the world market price, a provision commonly known as "marketing loans." The Secretary is required to make marketing loans available for the 1985 crop of rice. Advance recourse loans also are authorized, at the Secretary's discretion, for feed grains, wheat, upland cotton, and rice, if eligible producers obtain crop insurance with respect to the crop securing such a loan.

(2) *Loan deficiency payments*—The Act authorizes the Secretary to make loan deficiency payments available with respect to the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat to producers who are eligible for price support loans and purchases but who agree to forego such loans and purchases. The Secretary is required to make available a loan deficiency program for the 1985 crop of rice. The payment rate for such payments is the difference between the loan rate and the loan repayment rate applicable for "marketing loans". The payment is made for the quantity of the crop which is eligible for a price support loan but may not exceed the product of the farm program acreage times the farm program payment yield.

(3) *Deficiency ("target price") payments*—The Act provides that deficiency payments shall be made available to producers of rice, upland cotton, wheat, corn, grain sorghum, oats, and, if designated by the Secretary, barley. Payments for any of these crops are computed by multiplying: (i) The payment rate, by (ii) the farm program acreage for the crop, and by (iii) the farm program payment yield for the crop. The payment rate for these commodities is the amount by which the higher of the national weighted average market price received by producers during the first five months of the marketing year for the crop (the calendar year which includes the first five months of the marketing year for such crop for upland cotton) or the national average price support loan level for such crop is less than the established "target" price.

With respect to wheat and feed grains, if the Secretary reduces the national average price support loan level in order to maintain a competitive market position for the commodity, the Secretary is required to increase the deficiency payments for the crop of such commodity by a corresponding amount. Such amount is computed by determining a separate deficiency payment for the commodity by using a payment rate that is the smaller of: (i) The difference between the national average price support loan level before the reduction is made and the national average price support loan level after the reduction is made, or (ii) the difference between the national average price support loan level before such a reduction and the national weighted average market price for the crop received by producers during the marketing year.

At the Secretary's option, the deficiency payment rate for each of the 1986 through 1988 crops of wheat and feed grains may be the amount by which the established "target" price exceeds the higher of: (1) The loan rate for the crop of the commodity before the loan rate is reduced by the Secretary to maintain a competitive market position or (2) a specified per bushel price for the crop of the commodity. With respect to corn, this specified price is $2.04 for the 1986 crop year, $2.19 for the 1987 crop year, and $2.24 for the 1988 crop. With respect to wheat, this specified price is $2.55 for the 1986 crop, $2.65 for the 1987 crop, and $2.82 for the 1988 crop. The deficiency payment rates for grain sorghum, oats, and, if designated by the Secretary, barley, are to be established at such rate which is determined to be fair and equitable in relation to the rate at which payments are made available for corn. The established "target" price for each crop will be announced by the Secretary annually.

(4) *Disaster payments*—The Act generally provides that the Secretary shall make prevented planting payments to producers of rice, upland cotton, feed grains, and wheat unless prevented planted crop insurance is available to them under the Federal Crop Insurance Act with respect to their acreage. The Act also generally provides that the Secretary shall make reduced yield payments to producers of rice, upland cotton, feed grains, and wheat unless reduced yield crop insurance is available to them under the Federal Crop Insurance Act with respect to their acreage.

(5) *National program acreage*—The Act generally provides that the Secretary is required to announce a national program acreage for each crop of rice, upland cotton, feed grains, and wheat. The national program acreage for any crop shall be the number of harvested acres the Secretary determines will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year for such crop. The national program acreage for any crop is announced by the Secretary annually. However, the national program acreage is not applicable for any crop of a commodity for which an acreage limitation program has been announced. The national program acreage, the program allocation factor, and the individual farm acreage determination are used in all crop years when an acreage limitation program has not been announced for a crop.

(6) *Program allocation factor*—The Act generally provides that the Secretary is required to determine a program allocation factor for each crop of rice, upland cotton, feed grains, and wheat. In general, the factor is determined by dividing the national program acreage for the crop by the

number of acres that the Secretary estimates will be harvested for such crop. The program allocation factor is announced by the Secretary annually. However, the program allocation factor is not applicable for any crop of a commodity for which an acreage limitation program has been announced.

(7) *Individual farm acreage*—The Act generally provides that the individual farm program acreage for each crop of a commodity shall be determined by multiplying the allocation factor by the acreage of the crop of the commodity planted for harvest on the farm. However, this is not applicable for any crop of a commodity for which an acreage limitation program has been announced.

(8) *Acreage limitation (reduction) program*—The Act authorizes the Secretary to establish an acreage limitation program for any of the crops of rice, upland cotton, feed grains, and wheat if the Secretary determines that the total supply of any such commodity will be excessive in the absence of such a program. The limitation shall be achieved by applying a uniform percentage reduction to the acreage base for the crop for the farm. Producers who knowingly produce in excess of the permitted acreage of the crop are ineligible for loans and purchases and all payments with respect to that crop on that farm. The acreage which is reduced under the acreage limitation program is required to be devoted to conservation uses. Under this program, the individual farm program acreage is the acreage planted on the farm to the crop within the permitted acreage. Such program is commonly called an "acreage reduction program."

(9) *Set-aside program*—The Act authorizes the Secretary to establish a set-aside program for any crop of wheat or feed grains if the Secretary determines that the total supply of wheat or feed grains would be excessive in the absence of such a program. Under a set-aside program, producers on a farm are required to devote to conservation uses an acreage equal to a specified percentage of the acreage planted to the crop. There may also be a limit imposed on the acreage planted to the crop.

(10) *Land diversion program*—The Act authorizes the Secretary to make land diversion payments to producers of rice, upland cotton, feed grain, and wheat if a land diversion program is determined to be necessary in order to adjust the total national acreage of a crop of a commodity to desirable goals. The acreage diverted must be devoted to conservation uses. The extent of the diversion and the manner in which diversion contracts are made are to be determined by the Secretary. With respect to the 1986 crops of wheat and feed grains, if the Secretary determines that specified levels of each respective commodity will exist on the first day of the marketing year for that crop, a diversion program with in-kind payments is required. A land diversion program is required with respect to producers of the 1986 crops of wheat who planted their crop prior to the announcement of the 1986 Wheat Program.

(11) *Acreage conservation reserve*—The Act generally provides that the Secretary shall issue regulations with respect to the conservation uses to which reduced acreage, set-aside acreage, and diverted acreage must be devoted. This acreage is termed the "acreage conservation reserve" ("ACR"). These regulations are required to assure that the ACR is protected from weeds as well as wind and water erosion. The Secretary may permit the acreage to be devoted to certain crops and uses if the production is needed to provide an adequate supply of the commodity, is not likely to increase the cost of the price support program, and will not affect farm income adversely. This acreage may be devoted to wildlife food plots or wildlife habitat. The Secretary may pay a share of the cost of these practices or make additional payments if the producer agrees to permit public access to the land for hunting, fishing, trapping and hiking. State Agricultural Stabilization and Conservation committees are authorized to approve haying and grazing of this acreage for the 1986 crop year and grazing in the 1987 through 1990 crop years, except that haying and grazing may not be permitted during a 5-consecutive-month period of the year which is established by the State committee.

(12) *Cross compliance*—If a "cross compliance" requirement is implemented by the Secretary, producers on a farm who participate in a commodity program for a crop of rice, upland cotton, wheat or feed grains cannot exceed the crop acreage base established for the farm for any such commodity, including ELS cotton, if there is also an acreage limitation program in effect for any such commodity, including ELS cotton.

(13) *Normal Crop Acreage ("NCA")*—Section 1001 of the Food and Agriculture Act of 1977 was amended by the Act to provide that, whenever a set-aside program is in effect for a crop of wheat or feed grains, a requirement may be imposed as a condition of eligibility for program benefits that producers not exceed the acreage on the farm normally planted to crops designated by the Secretary reduced by any set-aside or diverted acreage. When this NCA limitation is in effect, the Secretary may increase the deficiency payments or make payments to compensate the producers for not exceeding the NCA and participating in any required set-aside program.

(14) *Payment limitation*—The Act provides that the total amount of disaster payments that a person shall be entitled to receive under one or more of the rice, upland cotton, feed grains, and wheat programs shall be limited to $100,000. The total amount of deficiency and diversion and wheat haying and grazing payments that a person shall be entitled to receive under one or more of the rice, upland and EIS cotton, feed grains, and wheat programs shall be limited to $50,000. A portion of the deficiency payments may be exempt from the limitation, as are certain other types of payments. The Secretary is authorized to issue regulations defining the term "person." These regulations are found at 7 CFR Part 795.

(15) *Advance deficiency and diversion payments*—The Act requires the Secretary to make advance deficiency payments for the 1986 crops of rice, upland cotton, feed grains, or wheat for which an acreage limitation or set-aside program is announced and for which deficiency payments are projected. The Secretary is authorized to make available advance deficiency payments for the 1987 through 1990 crops and advance diversion payments for the 1986 through 1990 crops. Such payments are limited to producers who enter into a contract to comply with the terms and conditions of the program for the commodity for the crop year. Conditions for refunding unearned payments are also prescribed.

(16) *Acreage credited for payment*—The Act provides for including acreages devoted to nonprogram crops and conservation uses in excess of 8 percent of the permitted acreage of the program crop in the farm program acreage for a crop for which an acreage limitation program is in effect. However, such acreages of nonprogram crops and conservation uses may be included only if the acreage of the program crop planted for harvest is at least 50 percent of the permitted acreage for the crop. "Nonprogram crops" are defined by the Act as crops other than wheat, feed grains, upland and extra long staple (ELS) cotton, rice, and soybeans.

(17) *Farm acreage bases*—The Act authorizes the Secretary to establish a farm acreage base for the 1986 crop

year, and requires the establishment of a farm acreage base for the 1987 through 1990 crop years. The farm acreage base is generally the sum of the crop acreage bases plus the sum of the average of the acreages devoted to soybeans and conserving uses on the farm in the 1986 and subsequent crop years. The sum of the crop acreage bases may exceed the farm acreage base only in the case of an established practice of doublecropping.

(18) *Crop acreage bases*—The Act added section 504 to the 1949 Act to provide for establishing crop acreage bases for each crop of rice, upland cotton, feed grains and wheat based upon the average of the acreages planted and considered planted to such commodity in the previous 5 crop years. For cotton and rice, the average of the acreages planted and considered planted to each such commodity in the previous 5 years shall be computed disregarding all years in which such acreage is zero. Pub. L. 99-253, approved February 28, 1986, amended section 504 of the 1949 Act to provide that if a rice or upland cotton base is calculated by disregarding a year in which the acreage of such crop was zero, the crop acreage base established for such commodity shall not exceed the average of the acreages planted and considered planted to such commodity in the previous 2 crop years. The Act provides for the determination of acreages to be included as "considered planted" acreage, including cases of prevented planting or failed acreage due to natural disaster or other condition beyond the control of the producer, and for adjustments for rotations and other factors. The Act also authorizes the Secretary to make upward adjustments in the crop acreage base for a crop on a farm for a year for which a farm acreage base is established provided the upward adjustment is offset by an equivalent downward adjustment in another crop acreage base(s) for the farm. Any such adjustment is limited to 10 percent of the farm acreage base.

(19) *Farm program yields*—The Act provides for the establishment of a farm program payment yield for each farm for each program crop for each crop year. The farm program payment yield for 1986 and 1987 crops is required to be the average of the farm program payment yields for the 1981 through 1985 crop years, excluding the highest and lowest yields. A farm program payment yield for a year may be assigned based on similar farms if such a yield has not been previously established for the farm. The Act authorizes the Secretary to establish the farm program payment yields for the 1988 through 1990 crops based upon the average of the farm program payment yields for the 1981 through 1985 crop years, excluding the lowest and highest yields. Alternatively, the Secretary is authorized to establish the 1988 through 1990 farm program yields based upon the average of the yields for the 5 immediately preceding crop years using the yield per harvested acre for the 1987 and subsequent crop years and the farm program payment yields for the 1983 through 1986 crop years. The crop year with the highest yield, the crop year with the lowest yield, and any crop year in which the crop was not planted on the farm are excluded when computing such 5-year average.

(20) *Reporting requirement*—The Act authorizes the Secretary to require any producer to provide planting and production history of a farm for each of the five crop years immediately preceding the crop year.

(21) *Inventory reduction program*—The Act authorizes the Secretary to establish an inventory reduction program for any crop of rice, upland cotton, feed grains, or wheat for which an acreage limitation or set-aside program is in effect. Under such program, producers would reduce their acreage of the crop planted for harvest by one-half of the requirement otherwise applicable under the set-aside or acreage limitation program for the commodity. If such producers agreed to forego obtaining a loan or purchase agreement and deficiency payments, they would be eligible for payments in an amount equal to the loan deficiency payments.

(22) *Payments in CCC-owned commodities*—The Act authorizes the making of a portion of disaster payments, inventory reduction payments, deficiency and diversion payments in the form of CCC-owned commodities. In connection with such payments, the Secretary is authorized to acquire and use like commodities that have been pledged to CCC as security for price support loans and to use other commodities owned by CCC. The Secretary may make such payments by delivering the commodity to the producer by transfer of negotiable warehouse receipts, by issuance of certificates redeemable for a CCC-owned commodity, or by other methods as the Secretary determines to be appropriate.

(23) *Advance program announcement*—The Act permits the Secretary to offer an option to producers of the 1987 through 1991 crops of wheat, feed grains, upland cotton, and rice whenever the terms of the commodity price support, production adjustment, and payment program for such crop are not announced by a specific deadline. Under the option, the Secretary is authorized to make loans and purchases and deficiency payments available to producers of the crop on the same basis and under the same terms and conditions which are applicable to the program announced for such crop for the preceding year. The acreage base and farm program payment yield for the crop are required to be the same as those established for the preceding year.

(24) *Cost reduction options*—The Act authorizes the Secretary to take certain actions if the actions would reduce the total of the direct and indirect costs to the Federal Government of a commodity program without adversely affecting income to small and medium sized producers participating in such program. The actions include permitting participating producers to submit bids to convert the acreage of a crop planted for harvest to diverted acreage in return for payments in the form of CCC-owned commodities. The Secretary must determine that world supply or demand conditions have substantially changed after the announcement of the program for the crop and that further action to prevent a surplus is necessary. Commodity payments under this program are exempt from the $50,000 limitation which is applicable to deficiency and diversion payments but such payments are limited to a total of $20,000 per producer for each commodity for each crop year.

Other such options include the issurance of interest payment certificates to any producer who repays a price support loan, with interest. The producer would be able to redeem these certificates for commodities owned by CCC. The Act also provides that the Secretary may provide for the settlement of nonrecourse loans in an amount which is less than the principal loan amount, plus interest, if such action will reduce loan forfeitures, or storage expenses, or result in the payment of a portion, rather than none, of the accumulated interest which has occurred with respect to such loans.

(25) *Targeted Wheat Payments*—The Act authorizes the Secretary to adjust the established "target" price for a crop of wheat on the basis of (A) the percentage by which the producers reduce the acreage planted to wheat on the farm for harvest from the crop acreage base in accordance with an acreage limitation program or (B) a graduated scale of production under which the amount of payments made to producers would vary for specified

quantities of wheat produced by a producer and such payments would be targeted to commercial family farmers who have annual gross sales over $20,000.

(26) *Multi-year set-aside*—The Act authorizes the Secretary to enter into multi-year set-aside contracts for a period which is not to extend beyond the 1990 crops. Only producers participating in the annual program for one or more crops would be eligible to contract with the Secretary. The contracts would include provisions for maintaining vegetative cover on the land withdrawn from production. The Secretary would be required to provide cost-share incentives for the establishment of such cover.

(27) *Conservation Reserve Program*—The Act provides for a Conservation Reserve Program under which producers will enter into contracts with CCC to take highly erodible land out of crop production for a period of 10 years. The terms and conditions of such program are set forth at 7 CFR Part 704. The Act provides, however, that the acreage bases established on a farm shall be temporarily reduced when the farm participates in the Conservation Reserve Program and shall be restored upon the expiration of the Conservation Reserve Program contract.

(28) *Sodbuster/Swampbuster Program*—The Act includes requirements which are commonly known as the "Sodbuster and Swampbuster" programs. Under these provisions, producers will be ineligible for any benefit under the programs set forth at 7 CFR Part 713 if they bring into crop production highly erodible lands or wetlands except under certain limited conditions.

(29) *Wheat Poll*—The Act requires that the Secretary conduct, no later than July 1, 1986, a poll by mail ballot of eligible producers of wheat to determine whether the producers favor imposition of mandatory limits on the production of wheat that will result in wheat prices that are not lower then 125 percent of the cost of production. The Secretary is required to have the poll reflect differences in size and type of farm operations, types and classes of wheat produced, and demographic information. An eligible producer is one who produced a crop of wheat during at least one of the 1981 through 1985 crop years on a farm with a wheat acreage base of at least 40 acres.

(30) *Proclamation of Wheat Marketing Quotas and Referendum*—The Act authorizes the Secretary to proclaim, by June 15, 1986, a national marketing quota for each of the 1987 through 1990 marketing years for wheat. Such quotas shall be the quantity estimated to be required to meet anticipated needs during the marketing year, considering domestic requirements, export demand, emergency food aid needs, and adequate carryover. If national marketing quotas are proclaimed, the Secretary is required to conduct, by mail ballot, by August 1, 1986, a referendum of eligible producers to determine whether they favor or oppose marketing quotas for the 1987 through 1990 marketing years for wheat. If at least 60 percent of the producers voting favor quotas, marketing quotas for wheat shall be in effect for such marketing years.

(31) *Farm Marketing Quotas*—If marketing quotas for wheat are proclaimed, the Act requires that the Secretary establish an apportionment factor for each crop. The factor generally is determined by dividing the national marketing quota by the average wheat production during the 1981 through 1985 crop years. The factor is used to compute a farm marketing quota for each farm on which wheat was planted for harvest, or considered planted to harvest, during the 1981 through 1985 crop years. For such farms, the quota is generally the result of multiplying the apportionment factor, times the average yield during such period, times the average number of acres planted or considered planted to wheat during the period. The farm marketing quotas shall be established by June 1 of the year before the crop year for which quotas are in effect.

(32) *Marketing Penalties*—The Act provides for the assessment of penalties on all marketing of wheat from a farm in excess of the farm marketing quota. Penalties also are imposed with respect to any producer who falsely identifies, or fails to certify, the acreage planted to wheat for harvest, or fails to account for the disposition of any wheat produced on such acreage. The penalty is 75 percent of the national average market price for wheat during the immediately preceding marketing year. The Act specifies who must pay the penalty and the collection and disposition of such penalties.

(33) *Conservation Easements*—The Act authorizes the Secretary to acquire conservation easements on wetland, upland, or highly erodible land. The easements are to be acquired by cancelling a portion of the outstanding loans of the landowner acquired under the programs administered by the Farmers Home Administration.

(34) *Wheat and feed grain export certificate program*—The Act provides that the Secretary may establish a program to provide incentives for the export of any of the 1986 through 1990 crops of wheat or feed grains.

(35) *Other provisions.* The Act includes provisions which relate to the loan and purchase programs made available in accordance with the 1949 Act. The provisions include advance recourse commodity loans, interest payment certificates, CCC sales price restrictions, and the farmer-owned reserve.

B. The Commodity Credit Corporation Charter Act, as Amended

The Commodity Credit Corporation Charter Act, as amended, provides CCC with broad authority to support the price of agricultural commodities, stabilize agricultural commodity markets, and remove and dispose of agricultural surpluses. Accordingly, when applicable, this act is cited as the authority for certain provisions of this interim rule.

II. Changed Provisions

A. Part 713, Feed Grain, Cotton, Rice, and Wheat

(1) *General.* The following is a discussion of a number of the significant provisions of the 1986 through 1990 rice, upland cotton, feed grains, and wheat programs which differ from the provisions which were applicable to these programs for the 1982 through 1985 crops of these commodities. The provisions of the 1986 through 1990 ELS cotton programs are generally not changed from the provisions which were applicable for the 1984 and 1985 crops. Where some changes have been deemed advisable to ensure more conformity between ELS cotton and the other commodities, such changes are noted below.

(2) *Farm program payment yields.* This interim rule provides that the 1986 and 1987 farm program payment yields for rice, upland cotton, feed grains, and wheat shall be the average of the farm program payment yields for the crop on the farm for the 1981 through 1985 crop years excluding the highest and lowest yields. If the crop is not produced in the crop year, a yield shall be assigned by the county Agricultural Stabilization and Conservation (ASC) committee in accordance with instructions issued by the Deputy Administrator, State and County Operations, ASCS ("Deputy Administrator") based upon similar farms.

The farm program payment yields for rice, upland cotton, feed grains, and wheat for the 1988 through 1990 crop years may be either the farm program payment yield which is applicable for

the 1986 and 1987 crops of the commodities or the average of the actual yields for the 5 previous crop years, excluding the highest and lowest yields. If actual yields are used beginning with the 1988 crop year, the actual yield per harvested acre for each of the 1987 and subsequent years shall be used in computing the farm program payment yield for the current year and for the 1983 through 1986 crop years, the farm program payment yield for the commodity for such year shall be used. When the Secretary announces the 1987 commodity programs, the announcement will include a statement as to whether evidence of 1987 actual yields must be furnished in order to compute 1988 farm program payment yields. The interim rule includes provisions which are applicable to ELS cotton yields and provisions which may be applicable to actual yields for rice, upland cotton, feed grain, and wheat for the 1987 and subsequent crops.

(3) *Prevented planting and reduced yield payments.* This interim rule provides that prevented planting and reduced yield payments shall be made to producers of rice, upland cotton, feed grains, and wheat who are otherwise eligible for program benefits if prevented planting or reduced yield crop insurance, respectively, is not available under the Federal Crop Insurance Act with respect to the producer's acreage of the commodity.

(4) *Definition of conserving uses.* In order to distinguish between acreage which is designated under the Conservation Reserve Program, acreage which is designated as acreage conservation reserve ("ACR") under the annual commodity production adjustment programs, and the "conservation use" acreage which is specified in the Act, the phrase "conserving uses" has been adopted. For the purpose of determining acreage that can be credited as farm program acreage for payment and for history purposes when an acreage reduction program is in effect, this interim rule provides that acreages devoted to conserving uses shall include all cropland except: (1) Acreage devoted to crops for which price support loans and purchases are available, (2) acreage devoted to nonprogram crops, (3) acreage designated as ACR, (4) acreage devoted to conservation uses under the Conservation Reserve Program, Water Bank Program or similar program, and (5) other acreage not available as cropland in the current year as determined by the Deputy Administrator, State and County Operations (the "Deputy Administrator"). The farm operator will have the opportunity to designate the crop program to which the acreage of nonprogram crops and conserving uses shall be credited.

(5) *Planted and Considered Planted Credit for Determining Crop Acreage Bases.* For the purpose of determining acreage bases established for rice, upland and ELS cotton, feed grains, or wheat for the 1986 and subsequent crop years, this interim rule provides that the acreage planted and considered planted for the 1981 through 1985 crop years shall be that acreage which is so determined in accordance with the regulations in 7 CFR Part 713 applicable to such crop year. Because producers during these years were informed that they would not be penalized for underplanting a program crop, it would be unfair and inequitable to change the manner in which planted and considered planted credit was determined with respect to these crop years.

For 1986 and subsequent crops, the acreage planted and considered planted for farms on which producers participated in the program for such crop shall be the sum of the acreage planted for harvest, the required ACR, acreage which the producer was prevented from planting to the crop due to a natural disaster or similar conditions beyond the producer's control, and the acreage of nonprogram crops and conserving uses credited to the crop. The total shall not exceed the acreage base for the crop for such year. However, if a cross compliance requirement is not in effect for such crop for such year, the total acreage of nonprogram crops and conserving uses credited to all crops on the farm may cause the total of the crop acreage bases computed for the next year to increase from the total in the previous year.

These provisions permit a participating producer who underplants the permitted acreage of the crop on the farm to receive planted and considered planted credit equal to the acreage base for the crop. This applies regardless of whether the producer planted 50 percent of the permitted acreage in order to receive deficiency payments on the entire permitted acreage less 8 percent.

For farms on which producers do not participate in the program for the crop for the 1986 through 1990 crop years, the acreage planted and considered planted shall be the sum of the acreage planted for harvest and the acreage which the producer was prevented from planted to the crop due to a natural disaster or similar condition beyond the producer's control. As in prior crop years, a producer who does not plant any acreage of the program crop may still obtain considered planted credit equal to the crop acreage base for the farm. However, the considered planted credit is limited to the acreage of nonprogram crops and conserving uses on such farm which is not credited to other program crops.

(6) *Farm Acreage Bases*—This interim rule provides that the farm acreage base for a crop year shall be the sum of the crop acreage bases for all crops on the farm for the crop year plus the average of the acreages of soybeans and conserving uses as defined in paragraph (3) above for the 1986 and subsequent crop years. This interim rule provides that the farm acreage base cannot exceed the total cropland of a farm except if such excess is due to an established practice of double cropping. ELS cotton acreage bases as well as acreage allotments established for tobacco and peanuts are not taken into consideration in computing farm acreage bases.

(7) *Haying and Grazing ACR*—This interim rule permits State committees to determine a consecutive 5-month period during which haying and grazing of ACR is prohibited.

(8) *Failed Acreage and Prevented Planted Acreage Credit*—This interim rule provides that, whenever a natural disaster or similar condition prevents the planting of a program crop or causes a program crop to fail, the producer may plant another crop. The acreage of the crop initially planted or intended to be planted will be credited for the purpose of determining farm and crop acreage bases. The acreage initially planted will also be considered planted for the purpose of determining deficiency payments and program compliance. Except in the case of crops subject to marketing or poundage quotas and in the case of established doublecropping patterns, the acreage of the crop subsequently planted will not be considered as being planted for any program purpose, including determining deficiency payments, determining compliance with program requirements, and establishing farm and crop acreage bases in future years. With respect to the commodity programs established for the 1982 through 1985 crop years, the acreage of the crop which was subsequently planted was considered as having been planted to the subsequent crop for all program purposes.

(9) *Crop Acreage Bases*—This interim rule continues the provisions which were applicable to the 1982 through 1985 crop years for recognizing established crop rotations when establishing crop

acreage bases. Because such rotations are commonly used by producers, continuing to recognize rotation patterns in establishing crop acreage bases will result in more crop acreage bases which reflect the actual production history of the farm. Previously, in order to establish a crop acreage base, the average of the acreages planted and considered planted to a commodity for the 2 prior years corresponding to the current year for which the acreage base is established were used in making such a determination. This interim rule provides that an average of the 3 prior corresponding years' planted and considered planted acreage shall be used to establish crop acreage bases since this will be more compatible with the 5 year base period used for computing nonrotation acreage bases.

Corn and grain sorghum are combined and barley and oats are combined for the purpose of computing crop acreage bases when the base period includes a year in which producers on the farm participated in the program for each of such crops. Because the acreage planted and considered planted in such crop year was determined by prorating the combined acreage bases between corn and rain sorghum and between barley and oats, failing to use the combined crops when 1986 crop acreage bases are computed would penalize those producers who participated in production adjustment programs in prior crop years.

The sum of the crop acreage bases for rice, upland cotton, feed grains, and wheat shall not exceed the cropland on the farm, except for an established practice of doublecropping. This provision will result in reducing some 1986 crop acreage bases which exceed the total acreage normally devoted to such crops. The operator will have the opportunity to choose the crop for which the acreage base will be reduced.

(10) *Adjustments of Crop Acreage Bases*—This interim rule provides for several types of adjustments of crop acreage bases. When a farm acreage base is in effect, any crop acreage base greater than zero may be increased by up to 10 percent of the farm acreage base if the other crop acreage bases on the farm are reduced by a corresponding amount. The interim rule continues provisions which are applicable to the 1982 through 1985 crop years with respect to: (i) The establishment of crop acreage bases on farms with a crop rotation history, (ii) the reduction of crop acreage bases due to lack of irrigation water, and (iii) the adjustment of crop acreage bases in order to be representative of the producer's normal farming operations.

(11) *Ineligible land*—For clarity, and for the purpose of implementing the provisions of section 1318 of the Act pertaining to the Farmer's Home Administration obtaining easements on certain lands, § 713.97 of this interim rule sets forth the terms and conditions under which land is ineligible for any consideration for program payment or ACR purposes.

(12) *Conservation Reserve Program*—This interim rule includes provisions for reducing the crop acreage bases and the farm acreage base established for a farm when a contract to withdraw cropland from production is entered into in accordance with 7 CFR Part 704, the Conservation Reserve Program. This interim rule provides for the cancellation of an existing contract to participate in the annual commodity programs or, at the operator or owner's option, to revise the contract to use the acreage bases, for purposes of program participation, as reduced in accordance with 7 CFR Part 704. There are also provisions for restoring any acreage bases which have been reduced under the Conservation Reserve Program after the expiration of the conservation reserve contract. Although the authority for crop acreage bases and farm acreage bases will expire with the 1990 crops, the Department will restore, subject to the statutory authority in effect at the time the Conservation Reserve Program contract expires, any reductions which have been made under the provisions of 7 CFR Part 704. The crop acreage bases will be restored by reducing the acreage base for the crop each year of the conservation reserve contract and giving considered planted credit equal to the amount of the reduction. When the conservation reserve contract expires, the crop acreage base for the next year will be computed using the rules in effect at that time.

(13) *Compliance with other restrictions*—Producers who participate in the annual commodity programs described in 7 CFR Part 713 are responsible for complying with the provisions of the Act prohibiting the cultivation of highly erodible land and certain wetlands ("sodbuster/swampbuster"). In addition, in accordance with 7 CFR Part 796, a person is not eligible to receive certain benefits if the person has been convicted of violation of Federal or State controlled substance laws. Persons participating in the annual commodity production adjustment programs are also subject to a total payment limitation of $50,000 (excluding disaster payments which are subject to a separate $100,000 limitation). The regulations set forth at 7 CFR Part 795 define the term "person" for payment limitation purposes and state the payments which are subject to the payment limitation.

For purposes of compliance with the terms and conditions of 7 CFR Part 713, the term "person" is set forth at § 713.3. However, in order to be in compliance with 7 CFR Part 713, a program participant must also comply with the terms and conditions of 7 CFR Parts 795 and 796 including compliance with respect to the definition of a "person" for purposes of such parts.

(14) *Requirements for ACR.*—During the 1983 through 1985 crop years, acreage which was eligible for designation as ACR and was devoted to permanent vegetative cover was eligible for designation as ACR throughout the period. This provision has not been extended to the 1986 commodity program. The purpose of the provision was to encourage the establishment of permanent vegetative cover on highly erodible cropland. Such cropland is now eligible for entry into the Conservation Reserve Program and, accordingly, the provision is no longer needed.

(15) *Yields for acreages of nonprogram crops and conserving uses.*—The Act provides that acreages of nonprogram crops and conserving uses may be included in the farm program acreage when deficiency payments are computed. This interim rule provides that, when there are both irrigated and nonirrigated yields established for the program crop for the farm, any acreage of nonprogram crops or conserving use shall be considered to be nonirrigated, except in accordance with instructions issued by the Deputy Administrator. This interim rule also provides that the farm program payment yield established for a crop may be reduced in accordance with instructions issued by the Deputy Administrator if an acreage of nonprogram crops or conserving uses is included in the farm program acreage for such crop and the acreage devoted to nonprogram crops or conserving uses would not normally produce the farm program payment yield for the program crop.

B. 7 CFR Part 770, Commodity Certificates and In-Kind Payments

All payments made by CCC to producers under the 1985 commodity production adjustment programs were in the form of a check payable to the producer. The 1983 wheat, feed grain, upland cotton, and rice production adjustment programs provided the

opportunity for producers who complied with acreage reduction and paid diversion programs established for such commodities to receive additional in-kind compensation in exchange for devoting an additional portion of their permitted crop acreage base to approved conservation uses. This in-kind compensation was in the form of the kind of commodity which the producer would have otherwise produced on the acreage devoted to approved conservation uses in accordance with 7 CFR Part 770 and was in a quantity which was equal to a specified percentage of the farm's yield of the commodity. A similar program was established for the 1984 crop of wheat. This interim rule deletes in their entirety the regulations at 7 CFR Part 770 setting forth the provisions of the 1984 Wheat Payment-In-Kind Program.

The Act establishes several mandatory and discretionary provisions with respect to the authority of the Secretary to make non-cash payments to producers who comply with the applicable program requirements. Section 1005 of the Act added section 107E to the 1949 Act to provide generally that, in making in-kind payments under any of the annual programs for wheat, feed grains, upland cotton, or rice (other than certain marketing certificates for upland cotton or rice), the Secretary may acquire and use like commodities that have been pledged to CCC as security for CCC commodity loans and the Secretary may use other like commodities owned by CCC. This section further provides that in-kind payments also may be made: (1) By delivery of the commodity to a producer at a warehouse or other similar facility; (2) by the issuance of negotiable warehouse receipts; (3) by the issuance of certificates redeemable for commodities; and (4) by such other means as the Secretary determines appropriate.

This interim rule amends the regulations set forth at 7 CFR Part 770 to provide that participating producers who comply with the terms and conditions of the programs administered by CCC or ASCS may receive payments from CCC in the form of in-kind payments, commodity certificates, and by other specified methods. The portion of the payment to be made in a form other than in cash shall be determined in accordance with the applicable regulations and announcements which authorize the making of program payments to the producer.

Payment made in a manner other than in cash may be subject to restrictions set forth in 7 CFR Part 770 regardless of the provisions of the contract executed by the producer to participate in the program.

Section 770.3 provides that CCC may make a non-cash payment by requiring the producer to: (1) Redeem a quantity of a crop pledged as collateral for a CCC loan, (2) sell such quantity to CCC, and (3) accept from CCC a like quantity of the commodity sold to CCC. CCC shall determine the quantity of the commodity which must be so redeemed, sold, and accepted. Similarly, § 770.5 provides that CCC may make a non-cash payment to a producer from the inventory of commodities owned by CCC. The documentary evidence of such a payment shall be in the manner prescribed by CCC and may include the issuance of negotiable warehouse receipts.

Section 770.4 provides that commodity certificates redeemable in commodities may be issued to the producer in an amount equal to the cash payment which would otherwise have been made to the producer. Commodity certificates may state certain restrictions which may be applicable to such certificate with respect to: (1) Persons who may receive the certificate; (2) persons who may redeem the certificate; (3) the value of the certificate; (4) issuance and expiration dates applicable to the certificate; (5) restrictions as to the manner in which the certificate may be redeemed; (6) restrictions as to the kind of commodities for which the certificate may be redeemed; and (7) such other terms and conditions which are determined to be necessary by CCC.

The interim rule provides that specific redemption requirements will be applicable to the commodity certificates. Unless otherwise stated on the commodity certificate, only a subsequent holder (i.e., a person other than the original holder) of a certificate may present the certificate for redemption in commodities owned by CCC. A subsequent holder may also use a certificate to repay an outstanding CCC loan. There is, in addition, a mimimum quantity value of certificates that a subsequent holder must submit for redemption in order to receive commodities (lesser amounts may be paid in cash). Except with respect to those cetificates which the original recipient may redeem for commodities, the original recipient may present a certificate to the county ASCS office in exchange for cash payment. CCC may establish permissible time periods and deadlines for any of the described transactions.

C. 7 CFR Part 795, Payment Limitation

Section 1101 of the Agriculture and Food Act of 1981 (the "1981 Act") provided that the total amount of payments which a person may receive under one or more of the annual commodity programs established for each of the 1982 through 1985 crops of wheat, feed grains, upland cotton, ELS cotton, and rice may not exceed $50,000, (excluding disaster payments) and $100,000 for disaster payments. Section 1101 of the 1981 Act provided that the term "payments", for purposes of that section, does not include loans or purchases, or any part of any payment determined by the Secretary to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation. Section 1101 of the 1981 Act also provided that the Secretary shall issue regulations defining the term "person" and further provided that the rules for determining whether corporations and their stockholders may be considered as separate persons shall be in accordance with the regulations issued by the Secretary on December 18, 1970 in accordance with section 101 of the Agricultural Act of 1970.

Section 1001 of the Act generally provides the same restrictions as section 1101 of the 1981 Act with two exceptions. Section 1001 of the Act provides that, in addition to the exclusions from the term "payment" provided for in the 1981 Act certain payments and gains realized by a producer from repaying a price support loan at a rate lower than the original loan rate in accordance with specified sections of the 1949 Act also will not be considered to be "payments" which are subject to the maximum payment limitation. Further, section 1001 of the Act provides that the aforementioned regulations issued by the Secretary on December 18, 1970 shall be used to establish the percentage ownership of a corporation by the stockholders of such corporation for the purpose of determining whether such corporation and stockholders are separate "persons." Those rules regarding percentage ownership of corporations are contained in the regulations set forth at 7 CFR Part 795.

Accordingly, this interim rule amends 7 CFR Part 713 to list those payments which are not subject to the maximum payment limitation. It also amends 7 CFR Part 795 to make a technical correction with respect to the exclusion of payments from lands owned by States, political subdivisions, or agencies thereof, so long as such lands

are farmed primarily in the direct furtherance of a public function. While this exclusion was required by section 1101 of the 1981 Act and is also required by section 1101 of the Act, a final rule published on April 13, 1984 which amended 7 CFR Part 795 inadvertently removed this provision. Accordingly, this provision, as previously set forth in 7 CFR Part 795, is added by this interim rule. The interim rule also restores an exemption pertaining to Indian tribal ventures.

The regulations found at 7 CFR Part 713 provide that a producer is a person who shares in the crop, or the proceeds thereof, or would have shared in the crop if the crop had been produced. Some rental agreements provide for a person to receive both a minimum payment and a share in the crop. Determining whether such agreements constitute a share lease or a cash lease affects determinations of whether a person is a producer and eligible for payments in accordance with 7 CFR Part 713 and the determination of a "person" for the purposes of administering the maximum payment limitation provisions of 7 CFR Part 795. Accordingly, section 795.75 is amended by this interim rule to provide that, in order to be considered a share lease, an agreement must provide that the total amount of the rent paid to the landlord depends upon the quantity of the crop produced or the proceeds of the crop. 7 CFR Part 713 also is amended to refer to 7 CFR Part 795 in this respect.

When county or State committees make determinations that two or more entities are separate persons for the purpose of administering the requirements of 7 CFR Part 795, some time may pass before the determinations are reviewed by a higher reviewing authority. When such a review results in a determination that the entities should be combined, an inequity may result if the entities have lost the opportunity to reduce ACR requirements in accordance with § 713.57 or otherwise to change their farming operations. In order to remedy potential inequities, this interim rule adds a new § 795.24 to provide that relief will be granted to such persons for a crop year if there is a determination that the producer acted in good faith upon the initial determination of the county or State committee.

D. 7 CFR Part 796, Denial of Program Eligibility for Controlled Substance Violations

Section 1764 of the Act provides for the denial of program benefits to any person who is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year. With respect to any commodity produced in the crop year of the conviction and during the four succeeding crop years, such person shall be ineligible for: (1) Any price support loan, purchase agreement, or payment made in accordance with the 1949 Act, the CCC Charter Act, or any other Act; (2) any disaster payment made in accordance with the 1949 Act; (3) a farm storage facility loan made in accordance with the CCC Charter Act; (4) crop insurance made available in accordance with the Federal Crop Insurance Act, as amended; (5) a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act, as amended, or any other provision of law administered by the Farmers Home Administration; and (6) any payment made in accordance with sections 4 and 5 of the CCC Charter Act for the storage of an agricultural commodity produced in such crop years which is acquired by CCC.

Accordingly, this interim rule amends 7 CFR Part 796 to set forth provisions of section 1764 of the Act. Section 796.1 sets forth definitions of the terms "controlled substances", "person", and "state." The term "controlled substances" is defined to mean the term as defined by the Drug Enforcement Agency at 21 CFR Part 1308. The term "person" is defined in the same manner as is applicable to determinations of a "person" for purposes of applying the maximum payment limitation provisions of 7 CFR Part 795, Payment Limitations. The term "State" is defined in accordance with the provisions of section 1764 of the Act.

The interim rule further sets forth provisions that are applicable to protect tenants, sharecroppers, landlords and other persons on the farm when all such individuals on a farm have not been convicted of a violation of a Federal or State controlled substance State. The interim rule provides that such a person shall remain eligible for program benefits unless the person has also been convicted of such a violation. The interim rule provides that benefits specified in section 1764 of the Act which are made available in accordance with the 1949 Act and the CCC Charter Act shall not be made available to persons convicted of such violations during the crop year in which the violation occurred or in the four subsequent crop years. The interim rule also provides that a portion of the benefits otherwise due a corporation will not be made if a stockholder of the corporation is determined to be ineligible for program benefits as a result of the application of the provisions of 7 CFR Part 796.

E. Parts 1421, and 1427, Grains and Similarly Handled Commodities Cotton

The Act provides the Secretary discretionary authority to implement a recourse loan program for grain and similarly handled commodities and for upland cotton. The Act also requires as a condition of eligibility for recourse loans that the producer obtain crop insurance with respect to the commodity pledged as collateral for the recourse loan.

In order to set forth the authority of CCC to provide recourse loans to eligible producers, new §§ 1421.30 and 1427.26 are added to 7 CFR Parts 1421 and 1427, respectively.

Under the Act, the Secretary is required to offer producers of the 1985 through 1990 crops of rice and producers of the 1986 through 1990 crops of upland cotton the option of repaying price support loans at the lesser of: (1) The loan level or (2) for upland cotton, (A) a specified percentage of the loan level or (B) the prevailing world market price for upland cotton, and (3) for rice, the prevailing world market price for rice, but not less than a specified percentage of the loan level. The formulas for determining the prevailing world market prices for rice and upland cotton will be established by the Secretary and will be published in the **Federal Register**. The Act provides similar loan repayment provisions which may be implemented, at the Secretary's option, with respect to the 1986 through 1990 crops of wheat and feed grains.

The Act provides that, for the period August 1, 1986, through July 31, 1991, if the loan repayment rate for upland cotton is above the prevailing world market price and the marketing loan provisions of the Act fail to make United States upland cotton competitive in world markets, payments in the form of commodity certificates issued by CCC shall be made to first handlers of cotton. A first handler of cotton is a person regularly engaged in buying or selling upland cotton. The value of the commodity certificate is based upon the difference between the loan repayment rate in effect for a crop of upland cotton and the prevailing world market price for upland cotton, as determined by the Secretary. The Act further provides that if the Secretary makes such commodity certificate payments available, then the Secretary shall also make payments in the form of commodity certificates to persons who have raw cotton in inventory on August 1, 1986, in order to

make such cotton available on the same basis.

Beginning April 15, 1986, the Act also provides for payments to be made to certain producers of the 1985 crop of rice who did not obtain a CCC loan or purchase agreement with respect to their 1985 crop of rice.

In order to allow producers to repay a price support loan obtained with respect to grains and similarly handled commodities at less than the original principal amount of the loan when such a provision is determined and announced by CCC as being available, and in order for CCC to issue commodity certificates to eligible persons as required by the Act, §§ 1421.18, 1421.57, 1421.97, 1421.217, 1421.252, 1421.309, 1421.342 and 1421.467 are amended. With respect to upland cotton, similar amendments are made to §§ 1427.8 and 1427.22.

In addition, for purposes of clarity, § 1421.302(b) is revised by adding the words "Warehouse-stored" to the introductory phrase for such section. Currently, approved cooperatives only may obtain price support loans for eligible warehouse-stored commodities. In order to provide greater flexibility to approved cooperatives, the regulations found at 7 CFR Part 1421 are amended to provide that approved cooperatives also may request and obtain price support loans with respect to eligible farm-stored commodities. The regulations found at 7 CFR Part 1421 are further amended to remove obsolete subpart references which are no longer applicable to prior crops of grains and similarly handled commodities.

F. Part 1425—Cooperative Marketing Associations

(1) *Background.* Under the CCC Charter Act, CCC is authorized among its specific powers to "support the prices of agricultural commodities through loans, purchases, payments, and other operations." Section 12 of the CCC Charter Act further provides that CCC may use producer-owned and producer-controlled cooperative associations in conducting CCC's business.

(2) *Interim Rule.* This interim rule amends 7 CFR Part 1425 in order to ensure that cooperatives participating in price support programs will be able to better serve their members. These changes redefine the requirements that a cooperative must meet in order to participate in price support programs. Some of the changes will have a broad impact on how a cooperative may operate in all business areas, while others will only affect the commodity pooling operations of the cooperative.

This interim rule revises the regulations governing the eligibility of cooperative marketing association which obtain CCC price support loans and purchase agreements. It consolidates eight previous amendments, reorganizes and presents the regulation with greater clarity, and implements program changes. The rule: (A) Redefines the term "member" to include stock subscribers if so required under the law of the State in which the cooperative is incorporated; (B) deletes the provision that prevented inactive members having voting stock issued after May 14, 1980, from voting with respect to cooperative matters; (C) provides for an increase in the per unit rates for authorized commodities used in determining the adequacy of a cooperative's net worth; (D) allows some farm-stored commodities that have been delivered to a cooperative to be pledged as collateral for CCC price support loans; (E) deletes the requirements that individual sales must always be allocated to pool inventories and pool proceeds; (F) adds age, religion, and physical or mental handicap to the list of nondiscrimination provisions which a cooperative must meet with respect to its membership in order to be considered as an approved cooperative marketing association; (G) adds seed cotton as an authorized price support commodity; and (H) makes other minor administrative changes.

(3) *Major Program Changes.* The major program changes made by the interim rule are as follows:

(A) The definition of the term "member" is amended. Previously, the provisions of 7 CFR Part 1425 did not provide that stock subscribers were considered to be members of a cooperative. The interim rule, in § 1425.3(b)(i), provides that the term "member" shall include stock subscribers, if so required under the law of the States in which the cooperative is incorporated.

(B) Section 1425.5(f) previously provided that only "active" members of the cooperative may vote on decisions affecting the operation of the cooperative. The interim rule omits this restriction from the required provisions of the cooperative's charter and bylaws which are now set forth at § 1425.9.

(C) The unit rates used to determine the adequacy of a cooperative's net worth are increased. Previously, cooperatives were required to have a net worth equal to, or in excess of, the product of unit rates for commodities listed in the regulation times the volume of such commodities handled by the cooperative. Section 1425.10 provides increases in such rates to more closely reflect current levels of price support.

(D) The interim rule deletes the prohibition against pledging farm-stored commodities as collateral for CCC price support loans. Section 1425.16(b)(2) provides that price support will be available with respect to farm-stored commodities as provided in § 1421.3(g).

(E) Section 1425.16(c)(4) clarifies the authority of an approved cooperative to transfer the price support eligibility of a commodity from a warehouse to an approved warehouse.

(F) Accounting requirements with respect to proceeds and pool inventory are also amended. Previously, the proceeds of any pool of a commodity for which price support had been obtained could only be distributed to members participating in the pool on the basis of the quantity and quality of commodity delivered by each member. In addition, cooperatives were required to maintain a record of the commodity dispositions allocated to eligible and ineligible pools at the time of shipment or removal for processing. Sections 1425.17(b)(3) and 1425.20 of this interim rule provide that a cooperative may combine the sales proceeds from commodities constituting an eligible pool with commodities constituting ineligible pools or with other eligible pools for commodities. Section 1425.20 provides that records of the disposition of such commodities need not be maintained separately so long as sales proceeds from such pools are allocated among pools according to the quantity and quality of commodities included in such pools.

(G) Section 1425.19 adds: (1) Provisions prohibiting discrimination on the basis of age, physical or mental handicap, and religion, and (2) provisions of handling employee complaints as required by applicable statutes and regulations.

List of Subjects

7 CFR Part 713

Cotton, Feed grains, Price support programs, Wheat, and Rice.

7 CFR Part 770

Cotton, Feed grains, Price support programs, Wheat, and Rice.

7 CFR Part 795

Price support programs.

7 CFR Part 796

Agriculture, Marihuana.

7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Surety bonds, Warehouses.

7 CFR Part 1425

Commodity Credit Corporation, Cooperatives, Price support programs, Reporting requirements.

7 CFR Part 1427

Cotton, Loan programs/agriculture, Price support programs, Packaging and containers, Surety bonds, Warehouses.

Accordingly, the regulations of Chapters VII and XIV of Title 7 of the Code of Federal Regulations are amended as follows:

CHAPTER VII

1. Part 713 is revised to read as follows:

PART 713—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

Sec.

Authority. Secs. 308, 401, 501, 601, 1001, and 1031 of Pub. L. 99–198; secs. 107C, 109, 113, 401, and 403 of the Agricultural Act of 1949, as amended, 96 Stat. 766, as amended, 91 Stat. 950, as amended, 94 Stat. 2573, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1445b–2, 1445d, 1445h, 1421, 1423); sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309).

§ 713.1 Applicability.

(a) The regulations in this part, which are applicable to the feed grain, rice, upland and extra long staple. ("ELS") cotton, and wheat programs for the 1986 and subsequent year crops, set forth the terms and conditions under which producers of these commodities who enter into contracts with the Commodity Credit Corporation ("CCC") and comply with the contracts and the provisions of this part may qualify for program benefits.

(b) In accordance with section 1001 of the Food Security Act of 1985, and the regulations in Part 795 of this chapter, the total amount of payments (excluding disaster payments) which a person shall be entitled to receive annually under the rice, upland and ELS cotton, feed grain, and wheat programs shall not exceed $50,000. The term "payments" does not include:

(1) Loans or purchases;

(2) Any part of any payment that represents compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(3) Any gain realized by a producer for repaying a loan for a crop of rice, upland cotton, feed grains, or wheat under a marketing loan program;

(4) Any deficiency payment received for a crop of wheat or feed grains as the result of a reduction of the loan level for the crop and the resulting increase in established "target" price payments in accordance with § 713.108(a)(4);

(5) Any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice in accordance with a program established under § 713.55;

(6) Any inventory reduction payment for a crop of rice, upland cotton, feed grains, or wheat; and

(7) Any benefit received as a result of any cost reduction action taken in accordance with section 1009 of the Food Security Act of 1985.

(c) In accordance with the regulations in Part 796 of this chapter, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance such as marihuana.

(d) The programs are applicable throughout the United States, including Puerto Rico.

§ 713.2 Administration.

(a) The programs will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service ("ASCS") and shall be carried out in the field by State and County Agricultural Stabilization and Conservation Committees (herein called "State and county committees").

(b) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also: (1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or (2) require a county committee to withhold taking any action which is not accordance with the regulation of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any questions arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Adminstrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the program.

§ 713.3 Definitions.

(a) *Applicablity.* The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Part 719 of this chapter governing the reconstitutions of farms shall also be applicable except where these definitions conflict with those set forth in this part.

(b) *"Annually nonconserving crop"* shall mean any annual crop intended for harvest or use in any feed form except for the following:

(1) Grasses regardless of use, including sweet sorghum, millet, and sudan grass;

(2) Legumes, including peas, beans or soybeans for seed, grain, or processing where planting of such crops was delayed beyond the normal planting period by a disaster and the crop is too poor to be used for seed, grain, or processing. In other cases, soybeans produced for seed, grains, or processing are a nonconserving crop; and

(3) Small grains that are disposed of before the disposal deadline and excluded by the operator.

(c) *"Base period"* means the five crop years immediately preceding the current crop year.

(d) *"Conserving uses"* shall mean all uses of cropland as defined in Part 719 of this chapter except for acreage devoted at any time during the year to:

(1) A crop of rice, upland cotton, feed grains, wheat or ELS cotton;

(2) A crop of soybeans;

(3) Any nonprogram crop;

(4) Any crop for which price support is available through loans and purchases in accordance with chapter XIV of this title;

(5) Any acreage designated as acreage conservation reserve ("ACR") in accordance with the annual program for wheat, feed grains, upland cotton and ELS cotton, and rice;

(6) Any land subject to the Water Bank Program in accordance with Part 752 of this chapter;

(7) Any land subject to the Great Plains Conservation Program in accordance with Part 631 of this title;

(8) Any land subject to a contract executed with respect to the Conservation Reserve Program in accordance with Part 704 of this chapter;

(9) Any land which the producer was prevented from planting to a crop of rice, upland or ELS cotton, feed grains, or wheat and which is considered as planted to such crop for the purpose of computing crop acreage bases; and

(10) Any other acreage which is not available to be cropped in the current year and which is excluded in accordance with instructions issued by the Deputy Administrator.

(e) *"Considered planted acreage"* means for a crop the following:

(1) With respect to the 1981 through 1985 crop years, the acreage of a program crop determined to be considered as planted in accordance with the regulations in this part which were applicable for such crop year; and

(2) With respect to the 1986 and subsequent crop years, the sum of the following except that for farms participating in a set-aside, acreage reduction, or diversion program for the crop, the sum of the planted acreage and considered planted acreage for the crop shall not exceed the crop acreage base for the crop for the crop year:

(i) Any acreage devoted to ACR for the crop under a set-aside, acreage reduction, or diversion program as set forth in this part or any other part;

(ii) For wheat, any acreage eligible for payment in accordance with the wheat grazing and hay program;

(iii) The acreage determined to be intended to be planted to the crop but which was prevented from being planted to the crop because of drought, flood, or other natural disaster, quarantine, or other conditions beyond the control of the producer in accordance with § 713.105;

(iv) For farms participating in an acreage reduction program for the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102; and

(v) For farms for which there is a Conservation Reserve Program contract in effect, an acreage equal to the amount by which any crop acreage base is reduced in accordance with § 713.98 due to participation in the Conservation Reserve Program in accordance with Part 704 of this chapter.

(vi) For farms for which the acreage report filed in accordance with Part 718 of this chapter reflects zero acreage of the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102.

(3) With respect to any crop year, the considered planted acreage may be adjusted in accordance with instructions issued by the Deputy Administrator for farms for which an acreage base adjustment is made in accordance with § 713.11.

(f) *"Corn"* means field corn or sterile high-sugar corn. Popcorn, sweet corn, and corn varieties grown for decoration uses are excluded.

(g) *"Cotton"* means upland cotton and ELS cotton.

(h) *"Crop"* or *"Commodity"* means barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, or wheat ("Crop" is used when the reference is to a specific year or to growing plants; "Commodity" is used when the reference is general and abstract).

(i) *"Current year"* means the calendar year in which the crop with respect to which payment may be made under this part would normally be harvested.

(j) *"Disposal deadline"* means the date or time by which an acreage of barley, wheat, or oats must be disposed of in order that such acreage will not be considered as barley, wheat or oats for harvest or by which an acreage of rye or similar grain must be disposed of in order for the acreage to qualify as ACR acreage in accordance with § 713.62 of as a conserving or conservation use.

(k) *"Doublecropping"* means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

(l) *"Farm program acreage"* means the acreage used to compute deficiency payments for the crop for the farm as determined in accordance with § 713.108(b).

(m) *"Farm program payment yield"* means the yield for the farm which is determined by the county committee in accordance with § 713.6 adjusted to reflect any determinations made with respect to such yield in accordance with Part 780 of this chapter.

(n) *"Extra Long Staple (ELS) cotton"* means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by the Deputy Administrator: American-Pima; Sea Island; Sealand; all other varieties of the Bardadense species of cotton and any hybrid thereof; and any other cotton in which one or more of these varieties predominate.

(o) *"Grain sorghum"* means grain sorghum of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

(p) *"Marketing year"* means the 12-month period beginning in the current year and ending the next year as follows:

(1) Barley, oats, and wheat. June 1–May 31.

(2) Cotton and rice. August 1–July 31.

(3) Corn and grain sorghum. September 1–August 31.

(q) *"NCA crops"* means the crops which are so designated by the Secretary of Agriculture for any crop year in an announcement which establishes a normal crop acreage requirement.

(r) *"Nonprogram crops"* means any crop other than a crop of rice, cotton, feed grains, wheat, or soybeans as determined by a State committee in accordance with instructions issued by the Deputy Administrator.

(s) *"Person"* means an individual, joint stock company, corporation, estate or trust, association, or other legal entity, except that two or more entities shall be combined as one person in accordance with:

(1) The regulations found at Part 795 of this chapter for the purpose of administering maximum payment limitations;

(2) The regulations found at Part 796 of this chapter for the purpose of administering the provisions of the Food Security Act of 1985 with respect to the production of controlled substances; and

(3) The regulations found at Part 619 of this title and Part 718 of this chapter for the purpose of administering the provisions of sections 1201–1223 of the Food Security Act of 1985 (commonly known as "sodbuster and swampbuster" provisions).

(t) *"Planted acreage"* for a crop means the total of:

(1) The acreage planted for harvest as determined under the guidelines set forth in § 713.4; and

(2) The volunteer acreage of the crop except that acreage which is determined not to be economically practical to harvest.

(u) *"Producer"* means a person who, as owner, landlord, tenant, or sharecropper, shares in the risk of producting the crop, or would have shared had the crops been produced.

(v) *"Rice"* means rice excluding sweet, glutenous, or candy rice such as Mochi Gomi.

(w) *"Small grains"* means barley, oats, wheat, and rye.

(x) *Soybeans"* means any variety of soybeans which is planted regardless of the intended use.

(y) *"Upland cotton"* means planted cotton and stub cotton other than ELS cotton.

§ 713.4 Determining crop acreages.

(a) The county committee shall apply the guidelines in paragraphs (b) and (c) of this section in determining crop acreages planted for harvest, as well as any further instructions which may be issued by the Deputy Administrator:

(b) The county committee shall include as crop acreage planted for harvest any of the following:

(1) The acreage harvested;

(2) The acreage of small grains which was not disposed of before the disposal deadline; and

(3) The acreage of small grains which was disposed of before the disposal deadline if such acreage qualified for a reduced yield disaster payment in accordance with the provisions of §§ 713.120–713.127 or §§ 713.130 and 713.131 or failed acreage credit in accordance with the provisions of § 713.105.

(c) The county committee shall exclude as crop acreage planted for harvest any of the following:

(1) The acreage which failed and could have been replanted by the final planting date established for the crop, as determined by the Deputy Administrator, but which was not replanted;

(2) The acreage that is approved as ACR acreage in accordance with the provisions of §§ 713.60–713.74;

(3) The acreage which was disposed of without feed or other benefit (including lint benefit for cotton) and excluded by the operator on the report of acreage as provided in Part 718 of this chapter;

(4) The acreage of barley, oats, or wheat disposed of with feed benefit before the disposal deadline;

(5) The acreage which was approved for wildlife food plots or planted for wildlife in accordance with instruction issued by the Deputy Administrator;

(6) The acreage approved for grazing and hay payments in accordance with the provisions of § 713.54; and

(7) The acreage that was planted so late that it could not mature and produce grain or lint and, with respect to corn and grain sorghum, was not harvested for silage;

(8) Any acreage which is planted for experimental purposes under the direct supervision of a State experimental station or a commercial company and which meets other requirements as prescribed by the Deputy Administrator;

(9) The acreage of barley, oats or wheat which is determined by the county committee to be not economically practical to harvest because of a low yield and which is excluded as crop acreage by the operator; and

(10) The acreage of barley, oats, or wheat which is left standing as a cover crop past the disposal deadline determined by the Deputy Administrator if the producer: (i) Requests from the county committee, in writing, permission to allow such crop to be left standing before the crop reporting date; (ii) destroys the crop mechanically if the crop does not deteriorate before the end of the nongrazing period so that no benefit can be derived from the grain; (iii) does not obtain feed benefit from the crop; and (iv) pays the cost of a farm visit by a representative of the county committee to determine compliance with program requirements for disposal of the crop;

(11) Any acreage designated under the Conservation Reserve Program in accordance with Part 704 of this chapter;

(d) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except as follows:

(1) When a crop of barley, oats, or wheat is the first seeded crop in a mixture of small grains seeded or volunteered at different times, the mixture is considered to be the crop of barley, oats, or wheat which is first seeded.

(2) When corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

§ 713.5 [Reserved]

§ 713.6 Farm program payment yields.

(a) *Rice, upland cotton, barley, corn, grain sorghum, oats, and wheat yields.* (1) The bushel or pound per acre farm program payment yield for the 1986 and 1987 crop years shall be established in accordance with instructions issued by the Deputy Administrator and shall be the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest. Separate farm program payment yields may be established for irrigated acreages and for nonirrigated acreages for feed grains and wheat if: (i) The county committee determines that irrigation is a normal practice on the farm in most years; (ii) irrigation makes a substantial difference in crop yields; and (iii) the producer submits adequate evidence to the county committee that sufficient irrigation water is available for use on the acreage designated by the producer as irrigated acreage and that reasonable irrigation practices have been performed with respect to the irrigated acreage.

(2) If no farm program payment yield for a crop was established for any of the 1981 through 1985 crop years, the county committee may assign a yield in accordance with instructions issued by the Deputy Administrator for any such year based upon the farm program

payment yields for similar farms in the county or other surrounding area.

(3) The bushel or pound per acre farm program payment yield for the 1988, 1989, and 1990 crop years shall, as announced by CCC:

(i) Be equal to the farm program payment yield established for the farm in the 1986 and 1987 crop years, or

(ii) Be established in accordance with instructions issued by the Deputy Administrator. Such instructions shall provide that the farm program payment yield shall equal the yield per harvested acre for the crop for each of the five immediately preceding crop years, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which the crop was not planted on the farm. For purposes of this paragraph, the yield per harvested acre shall mean:

(A) With respect to the 1983 through 1986 crop years, the farm program payment yield for the crop; and

(B) With respect to the 1987 and subsequent crop years, the actual yield per harvested acre if the actual yield per harvested acre for:

(1) A crop year is not available, the county committee may assign the farm a yield for the farm on the basis of actual yields for the crop for such crop year on similar farms in the area.

(2) Any program crop is not available, the county committee may assign the farm a yield for the crop for such crop year on the basis of actual yields for the crop for such crop year on similar farms in the area.

(b) *ELS Cotton.* The yield in pounds per acre for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

(1) If no acreage of the crop was grown on the farm for a year, a yield for the crop shall be assigned by the county committee for the farm for such year based upon the actual yields for similar farms in the county or surrounding area.

(2) If any yield in the 3-year period preceding the current year is affected adversely as the result of a natural disaster or other condition beyond the producer's control, the county committee may adjust the yield for any such year upward to the simple average of the highest 4 actual yields of the most recent 5 years; and

(3) The Deputy Administrator may prescribe a limitation on the amount by which an ELS cotton yield may be reduced from one year to the next year.

(c) *Yield reduction.* For the purpose of determining the amount of any deficiency payment as provided in § 713.108 or the amount of any disaster payment as provided in §§ 713.120–713.127 or §§ 713.130 and 713.131, the farm program payment yield for a farm shall be reduced in accordance with instructions issued by the Deputy Administrator to reflect:

(1) Any reduction in the current year's yield for such farm which is the result of causes other than a natural disaster or other condition beyond the producer's control, such as a change in farming practice; or

(2) The inclusion in the farm program acreage of an acreage of nonprogram crops or conserving uses in accordance with § 713.108(b)(2) provided that such acreage would not normally produce the farm program payment yield for the applicable crop of rice, upland cotton, feed grains, or wheat.

(d) *Reports of production and supporting evidence.* A report of production is required to determine the actual yield per harvested acre for ELS cotton for the 1986 through 1990 crop years and, if applicable in accordance with paragraph (a) of this section for rice, upland cotton, feed grains, and wheat for the 1987 through 1990 crop years. Such report shall be made in accordance with instructions issued by the Deputy Administrator and on forms prescribed by the Deputy Administrator. When production has been disposed of through commercial channels, the county committee may require the operator or other producers to furnish documentary evidence in order to verify the information provided on the report. Acceptable evidence may also include such items as the original or a copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries. The county committee may also verify the evidence submitted by the producer with the warehouse, gin, or other entity which received production. If the evidence is not furnished or the information provided on the report cannot be verified, the county committee may disapprove the report of production.

(e) *Unrepresentative acreage.* If the crop acreage for a year is less than 50 percent of the acreage base for the crop, the county committee may determine, in accordance with instructions issued by the Deputy Administrator, that the actual yield for the year is unrepresentatively high and reduce the yield accordingly. Such reduced yield shall be used to compute actual harvested yields in accordance with paragraph (a)(3) of this section or for ELS cotton yields in accordance with paragraph (b) of this section.

§ 713.7 Crop acreage bases.

(a) An acreage base shall be established for a farm for each year beginning with 1986 for barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, and wheat.

(b) Except as provided in paragraphs (e) and (f) of this section, the crop acreage bases for any farm for the 1986 and subsequent crops of barley, corn, grain sorghum, oats, and wheat shall be the average of the acreage planted and considered planted to such program crop on the farm in the base period.

(c) For upland cotton and rice, except as provided in paragraphs (d), (e), and (f) of this section, the crop acreage base shall be equal to the average of the acreages planted and considered planted in the base period, excluding years in which no planted and considered planted acreage has been determined for the farm.

(d) Any crop acreage base established in accordance with paragraph (c) of this section shall not exceed the average of the acreages planted and considered planted to the crop in the two crop years of the base period immediately preceding the current crop year, if an acreage of the crop was not planted or considered planted during one or more years of the base period.

(e) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the average of the planted and considered planted acreages for the 3 immediately preceding crop years in the rotation cycle that correspond to the current year and in accordance with instructions issued by the Deputy Administrator.

(f) The sum of the crop acreage bases for a farm for a crop year shall not exceed the cropland for the farm, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator. If the sum of such crop acreage bases exceeds the cropland, the operator will be given the opportunity to reduce one or more crop acreage bases. If the operator fails to make such a reduction, such a reduction shall be made in accordance with instructions issued by the Deputy Administrator.

(g) The crop acreage base established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages for ELS cotton for the 3 years immediately preceding the year prior to the current year.

§ 713.8 Farm acreage bases.

(a) For the 1986 crop year, a farm acreage base shall not be established for any farm.

(b) For 1987 and subsequent crop years, a farm acreage base shall be established for each farm for each such crop year when one or more crop acreage bases are established for the farm for crops of wheat, feed grains, upland cotton, and rice. Such farm acreage base shall equal the sum of:

(1) The crop acreage bases established for such crop year for wheat, feed grains, upland cotton, and rice;

(2) The average of the acreages planted to soybeans for harvest in 1986 and subsequent crop years; and

(3) The average of acreages devoted to a conserving use in 1986 and subsequent crop years, excluding acreages considered in computing crop acreage bases.

(c) In no case may the farm acreage base for a farm for a crop year exceed the cropland for the farm for such crop year, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator.

§ 713.8a Normal crop acreages.

The normal crop acreage (hereinafter called "NCA") is the average of the sum of the acreages for the farm during a period of the NCA crops as designated by the Secretary of Agriculture in an announcement which establishes an NCA requirement for the crop year.

§ 713.9 Notice of crop and farm acreage bases, yields, and NCA.

The operator of a farm shall be notified in writing of the crop acreage bases, yields, and, if applicable, the farm acreage base and/or NCA which are established for the farm. However, no such notice shall be mailed to any producer who has on file in the county office a request in writing that such producer not be furnished with the notice. Such a producer shall be considered as having been notified timely and correctly of the contents of the notice.

§ 713.10 Reconstitution of farms.

(a) Farms shall be reconstituted in accordance with Part 719 of this chapter.

(b) The actual yield established and the yield established by the county committee for any crop for a farm resulting from a combination of farms or portions of farms shall not, except for rounding, exceed the weighted average of the applicable yields established for the component portions of such farm.

(c) The weighted average of the actual yield established and the yield established by the county committee for any crop for a farm resulting from a division of a farm shall not, except for rounding, exceed the applicable yields established for the parent farm before the division of such farm.

(d) In determining the weighted average yields determined in accordance with paragraphs (b) and (c) of this section, the crop acreage base for the farm for the current year shall be used.

§ 713.11 Adjusting crop acreage bases.

(a) *Adjustments using farm acreage base.* (1) With respect to the 1987 and subsequent crop years, an operator of a farm may adjust acreage bases established for crops of wheat, feed grains, upland cotton, and rice in accordance with paragraphs (a)(2)–(4) of this section.

(2) Within 15 days from the day the county committee issues a notice of the crop and farm acreage bases established for the farm for such crop year, the operator must file with the county committee a request for an adjustment of such bases.

(3) Any upward adjustment in the acreage base established for one crop must be offset by an equivalent total downward adjustment in the acreage bases established for such crop year for one or more other crops produced on the farm.

(4) Any increased adjustment of a crop acreage base established for a farm shall not exceed 10 percent of the farm acreage base. If more than one crop acreage base is increased, the total of such increases shall be limited to 10 percent of the farm acreage base.

(5) A crop acreage base of zero shall not be increased under this section.

(b) *Other adjustments.* The acreage base established for a crop of a commodity produced on the farm may be adjusted in accordance with instructions issued by the Deputy Administrator:

(1) If, in accordance with the regulations set forth at Part 780 of this chapter, it is determined that the acreage base previously established for a crop of a commodity produced on the farm is not representative of the current operator's normal farming operations on the farm; or

(2) When the county committee approves a recomputation of the acreage base established for the crop of a commodity produced on the farm in an amount not to exceed the planted and considered planted acreages for the farm for 1 or more previous years.

(c) *Changes from rotation to regular or vice versa.* The operator of a farm may request that the acreage base for a crop of a commodity produced on a farm be established in accordance with either § 713.7(e) or § 713.7(b)–(d). Such a request shall not increase the acreage base for such crop in the current year. The county or State committee may approve an increase in the acreage base established for such crop in future crop years in accordance with instructions issued by the Deputy Administrator.

(d) *ELS cotton adjustments.* An acreage base reserve is established for the 1986 crop of ELS cotton that equals 5 percent of the total of the acreage bases established for such crop in accordance with paragraph (b) of this section. Such reserve is in addition to the total of the acreage bases established for such crop in accordance with paragraph (b) of this section and shall be used by the county committee, after approval by and in accordance with instructions issued by the Deputy Administrator, for the purpose of adjusting the 1986 ELS crop acreage bases established for farms to correct for inequities and prevent hardship, and for the purpose of establishing ELS cotton acreage bases for farms on which no ELS cotton was planted during the period 1982–1985. The operator shall file a written request, in such manner as is prescribed by the Deputy Administrator, for an adjustment using the acreage base reserve. Such adjustments shall be in addition to, and not in lieu of, adjustments approved under paragraphs (b) and (c) of this section.

(e) *Reductions.* If the county committee determines that an adequate supply of irrigation water is a prerequisite for growing the crop of a commodity produced on the farm, the county committee shall reduce the acreage base established for such a crop for a crop year to the extent that irrigation water is not available.

§ 713.12–713.48 [Reserved]

§ 713.49 Nature of contract.

(a) The contract shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided in this part. The contract shall provide for recording the shares for division of payments for the crop. The operator shall agree to file timely a report of acreage on Form ASCS–578 accurately listing the ACR acreage and

the planted acreage of the program crop(s) planted for harvest on the farm, and such other acreages as are subject to the terms and conditions of the contract.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with Parts 1421 and 1427 of this title. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments, disaster payments, or wheat grazing and hay payments shall be made to such operator and producers.

(c) The contract shall contain such other provisions as CCC determines appropriate to carry out programs established by this part.

(d) The contract shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of an acreage reduction, set-aside, land diversion, or wheat grazing and hay program is to obtain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between CCC and producers, the Department and other segments of the agricultural community act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on CCC of the producer's failure to comply with a contract are obvious, it would be impossible to compute the actual damages suffered by CCC.

§ 713.50 Contracting procedures.

(a) *Signup.* Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the program.

(b) *Producer eligibility.* (1) The producer must be a person who shares in the risk of producing the program crop produced in the current year, or shares in the proceeds therefrom, on the farm for which the contract is submitted, or would have shared in the crop if it had been produced on such farm in the current year. The county committee shall determine who is a person in accordance with Part 795 of this chapter and instructions issued by the Deputy Administrator.

(2) A minor will be eligible to participate in the program only if one of the following conditions exists:

(i) The right of majority has been conferred up on the minor by court proceedings;

(ii) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(iii) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

§ 713.51 Required acreage reduction.

(a) The Secretary will announce:

(1) Whether an acreage reduction program is in effect for a crop year for a specific crop;

(2) The percentage reduction to be applied to the crop acreage base to determine the amount of required reduction; and

(3) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the permitted acreage, which is the acreage base established for the crop minus the sum of the acreage required to be devoted to ACR in accordance with an acreage reduction program and minus any acreage which is required to be devoted to ACR in accordance with a land diversion program;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage equal to the reduced acreage, or, as determined in accordance with instructions issued by the Deputy Administrator, a proportionately smaller acreage if the planted acreage is smaller than the permitted acreage; and

(3) Otherwise comply with all program requirements.

§ 713.52 Required set-aside.

(a) The Secretary will announce:

(1) Whether a set-aside requirement is in effect for a crop year for a specific crop of feed grains or wheat;

(2) The percentage of the planted crop acreage that is required to be set aside; and

(3) Whether producers on a farm are required not to exceed the NCA established for the farm, less any acreage which is devoted to conservation uses under any program and any wheat grazing and hay acreage; and

(4) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the NCA requirements, if applicable;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage equal to the set-aside requirement, and

(3) Otherwise comply with all program requirements.

§ 713.53 Land diversion.

(a) The Secretary will announce:

(1) Whether a land diversion program is in effect for a crop year for a specific crop;

(2) The percentage of the planted crop acreage or of the crop acreage base that producers are required to divert from the production of the crop under the program;

(3) The payment rate;

(4) Whether advance program payments will be available;

(5) Whether compliance with the land diversion requirement is required in order for the producer on the farm to be eligible for loans, purchases and payments for the crop; and

(6) Other requirements of the program.

(b) In order to be eligible for any land diversion payment, producers of the applicable crop or crops shall:

(1) Comply with all other program requirements for the crop;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage which is equal to the required diverted acreage.

§ 713.54 Wheat grazing and hay.

(a) The Secretary will announce whether a wheat grazing and haying program is offered for a crop year and the applicable payment rate.

(b) In order to be eligible for payment under the wheat grazing and hay program for a crop year, producers of wheat shall do all of the following:

(1) Graze or cut for green chop, hay, or silage, immature wheat that was planted for harvest as grain;

(2) Report the acreage for grazing and hay on Form ASCS–477;

(3) Complete the cutting or grazing to the point that the wheat is substantially destroyed by the disposal deadline; and

(4) Comply with all other program requirements for the crop.

(c) In no event can producers receive a payment under the wheat grazing and hay program on more than the larger of:

(1) 50 acres; or

(2) 40 percent of the total acreage on the farm of barley, corn, grain sorghum, oats, upland cotton, and wheat which is intended for harvest in the current year.

§ 713.55 Loan deficiency program.

(a) The Secretary will announce whether loan deficiency payments will be made to producers on a farm for a specific crop for a crop year. In order to be eligible for any loan deficiency payments if such payments are made available, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with Parts 1421 and 1427 of this title, as applicable;

(2) Agree to forego obtaining such loans or purchases; and

(3) Otherwise comply with all program requirements.

(b) The loan deficiency payment shall be computed by multiplying the loan payment rate, determined in accordance with paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan in accordance with Parts 1421 and 1427 of this title but not to exceed the product obtained by multiplying:

(1) The individual farm program acreage for the crop determined in accordance with § 713.108 by

(2) The farm program yield for the farm provided in § 713.6.

(c) The loan payment rate for a crop shall be the amount by which the level of price support loan originally determined for the crop exceeds the level at which CCC has announced, in accordance with Parts 1421 and 1427 of this title, that producers may repay their price support loans.

(d) With respect to upland cotton, an amount not to exceed one-half of such payment may be made and with respect to rice, an amount not to exceed one-half of such payments shall be made in accordance with Part 770 of this chapter.

§ 713.56 Inventory reduction program.

(a) The Secretary will announce whether an inventory reduction program is in effect for a crop year for a specific crop for producers on a farm.

(b) In order to be eligible for any inventory reduction payments, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain a loan or purchase agreement in accordance with Parts 1421 or 1427 of this title, as applicable;

(2) Agree to forego obtaining such loans or purchases;

(3) Agree to forego receiving deficiency payments made in accordance with § 713.108;

(4) Limit the acreage of the crop planted for harvest to the crop acreage base reduced by one-half of the acreage required to be diverted from production in accordance with any reduction and/or land diversion program for the crop; and

(5) Otherwise comply with all program requirements.

(c) Inventory reduction payments shall be computed in the same manner as set forth in § 713.55(b) and (c). Such payments shall be made in accordance with Part 770 of this chapter.

§ 713.57 Reduction in acreage to be devoted to conservation uses.

(a) A producer whose payments under the feed grain, rice, upland and ELS cotton, or wheat programs may be reduced because of the application of the provisions with respect to the payment limitation as specified in accordance with Part 795 of this chapter may request a downward adjustment in the amount of acreage which is otherwise required to be devoted to conservation uses on the farm. The request shall be in writing and shall be filed with the county committee on a form and by a date prescribed by the Deputy Administrator. If such a producer is sharing in program payments with respect to farms in two or more countries, it shall be the producer's responsibility to furnish information concerning the producer's paticipation in the other counties to the county committee with which the application for the downward adjustment is filed.

(b) Any reduction in ACR acreage required under this section shall be computed by: (1) Estimating the producer's total payments which would be received under the feed grain, rice, upland and ELS cotton, and wheat program on all farms, (2) determining the percentage by which the estimated total payments must be reduced in order to comply with the payment limitation, and (3) multiplying such percentage by the number of acres in the producer's portion of the ACR acreage which is required for the farm or farms participating in the programs. When both land diversion and acreage reduction or set-aside programs are in effect, the acreage required to be devoted to ACR in accordance with the acreage reduction or set-aside programs shall be reduced to zero before the acreage to be devoted to ACR in accordance with the land diversion acreage is reduced.

(c) If the producer is participating in the acreage reduction or set-aside program on two or more farms, the producer may elect to have the reduction in ACR acreages under these programs, but not under the land diversion programs, divided among the farms in such proportion as the producer may designate.

§ 713.58–713–59 [Reserved]

§ 713.60 Basic rules for ACR acreage.

Except as set forth in § § 713.65–713.74, or as announced by the Secretary, ACR acreage which is designated in accordance with the provisions of § § 531.51–712.53 must:

(a) Be eligible land in accordance with § 713.61;

(b) Meet minimum size and width requirements as specified in Part 718 of this chapter;

(c) Be devoted to approved cover or practices in accordance with the provisions of § 531.62;

(d) Not be grazed or harvested, except as provided in § 713.63; and

(e) Be cared for in accordance with the provisions of§ 713.64.

§ 713.61 Eligible land.

(a) For 1986 and subsequent crop years, land designated as acreage conservation reserve ("ACR") acreage must:

(1) Meet one of the provisions of paragraph (b) of this section, and

(2) Meet all provisions of paragraph (c) of this section. (b) ACR acreage must be cropland that:

(1) Is not in a summer fallow rotation and was devoted to small grains, row crops, or other crops planted annually in 2 of the 3 immediately preceding years. Land that was designated as ACR acreage or conservation use acreage under a production adjustment program will be considered as planted acreage in the year designated, except that land which is designated in accordance with paragraph (b)(3) of this section and which was not devoted to small grains or row crops in the immediately preceding year or land on which water systems are installed may not be so designated;

(2) Is in a summer fallow rotation as shown by the past history of crops produced on the farm if the land was devoted to small grains, row crops, or other crops planted annually in 1 of the 2 immediately preceding years, or was considered to have been so cropped;

(3) Is currently devoted to, and in at least 2 of the 3 immediately preceding years was devoted to, grasses or legumes for the production of hay, seed, or pasture in rotation with small grains

or row crops if the acreage devoted to such grasses or legumes and designated as ACR equals or exceeds acreage newly seeded to such grasses or legumes:

(i) In the summer or fall of the preceding year or seeded in the spring of the current year; and

(ii) On cropland that would have been eligible for designation as ACR acreage under paragraph (b)(1) of this section; or

(4) Does not meet the requirements of paragraph (b)(1) of this section if the ACR acreage requirement exceeds the total of all of the cropland, including the cropland planted in the current year which is eligible to be designated according to paragraph (b)(1) of this section, and such cropland is designated as ACR acreage in the following order:

(i) All cropland eligible under paragraph (b)(1) of this section even though such cropland may already have been planted in the current year;

(ii) All cropland that was devoted to small grains or row crops in 1 of the last 3 years; and

(iii) All cropland that was not devoted to small grains or row crops in the last 3 years.

(c) Land designated as ACR acreage may not be land:

(1) That is designated:

(i) Under the Water Bank Program in accordance with Part 752 of this chapter;

(ii) Under the Great Plains Conservation Program in accordance with Part 631 of this title;

(iii) Under the Conservation Reserve Program set forth in accordance with Part 704 of this chapter;

(iv) As ACR acreage for another program crop;

(2) For which a deficiency payment is or could be made for the program crop;

(3) That is acreage credited to the crop in accordance with § 713.102;

(4) Used as turn areas, except that these areas may be designated if both of the following apply:

(i) Minimum size requirements as specified in 7 CFR Part 718 of this chapter are met; and

(ii) The county committee determines that the area are normally planted to a crop;

(5) That is determined to be ineligible in accordance with § 713.97; or

(6) That is flooded or under water at any time during the year unless one of the following applies:

(i) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year;

(ii) After being flooded, such land could be planted in the current year by no later than the final reporting date for spring-seeded crops.

§ 713.62 Approved cover crops and practices.

(a) *Establishing and maintaining cover crops or practices.* (1) An approved cover crop or practice shall be established on acreage which is designated as ACR acreage by the end of the planting season for spring-seeded crops. Such cover crop or practice shall be maintained through the end of the calendar year except as follows:

(i) The ACR acreage may be seeded in the fall to crops which are of a type that when seeded in the fall in the county in which the farm is located normally attain maturity in the next calendar year;

(ii) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with paragraph (c) of this section; and

(iii) If the ACR acreage is used for nonagricultural purposes, the cover crop or practice must be maintained through the end of the nongrazing period established for ACR acreage.

(b) *Nationally approved cover crops and practices.* The following are nationally approved cover crops and practices for ACR acreatge:

(1) Annual, biennial, or perennial grasses and legumes, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(2) Barley, oats, rice, wheat, and other small grains planted and disposed in accordance with instructions issued by the Deputy Administrator.

(3) Crop residue from using "no till" or "minimum till" practices.

(c) *Locally approved cover crops.* Cover crops and practices that will protect the ACR acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the Soil Conservation Service ("SCS"), may recommend the cover crop or practice. The State committee shall consult with appropriate wildlife agencies and organizations and other interested groups to determine whether additional practices that further the goals of such organizations and groups can be developed.

(2) The cover crops or practices recommended shall not include:

(i) The growing of soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(ii) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(iii) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(3) Residue and stubble of destroyed program crops may be recommended, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 713.63(b).

(4) The State committee shall approve the cover crops or practices after consulting the SCS State Conservationist as to when the practices will sufficiently protect the land from wind and water erosion.

§ 713.63 Use of ACR acreage.

(a) *State committee determination.* The State committee may authorize grazing of ACR acreage for the 1986 through 1990 crops and haying for the 1986 crop, except during a 5-consecutive-month period for a county as determined by the State committee.

(b) *Harvesting.* Except as provided in paragraphs (a) and (d) of this section and § 713.72, harvesting on ACR acreage is prohibited for all crops:

(1) In the current year; and

(2) After December 31 of the current year if the crop would normally mature and be harvested in the current year.

(c) *Other uses.* (1) Removing catfish, crayfish, and other fish for commercial purposes is prohibited during the 5 principal growing months as determined by the State committee.

(2) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens.

(d) *Emergency Uses.* Notwithstanding the provisions of § 713.63 (a)–(c), the Deputy Administrator may authorize, on a county by county basis, the use of the ACR acreage for haying or grazing under such conditions as may be prescribed when abnormal weather conditions cause a critical shortage of hay and forage in the county.

§ 713.64 Control of erosion, insects, weeds, and rodents on ACR acreage.

(a) The farm operator shall use needed control measures in a timely manner to control erosion, insects, weeds, and rodents on the ACR acreage.

(b) Control measures for weeds need only be sufficient to prevent the spread of weeds. These measures must be consistent with control practices normally carried out on similar cropland in the area. It is not intended that control practices be more costly to the producer than what is normal for the area.

(c) The county committee shall prescribe and require additional control

measures upon a determination that those used by the producer are inadequate. When clipping or mowing to control weeds is prescribed, the county committee shall specify a time for clipping or mowing which is compatible with wildlife practices, but such time must be before the time such weeds form seeds.

§ 713.65 Orchards.

Unless the State committee determines otherwise, the entire area of an orchard or nursery meeting the minimum size requirements specified in Part 718 of this chapter is eligible to be designated as ACR if the trees were planted in the current year or fall of the previous year. The land also must meet the eligibility requirements of § 713.61.

§ 713.66 Land going out of agricultural production.

If the county committee determines that the designated ACR acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

§ 713.67 Emergency grazing or harvesting.

ACR acreage may be hayed or grazed in emergency conditions in accordance with guidelines issued by the Deputy Administrator.

§ 713.68 Wildlife food or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State committee, in consultation with wildlife agencies, is eligible to be designated as ACR acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, there must also be compliance with the requirements of § 713.61.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as ACR acreage.

§ 713.69 Noncrop uses or practices.

(a) The uses and practices listed in paragraph (b) of this section are eligible for ACR acreage if:

(1) Such uses and practices are installed on acreage that is otherwise eligible as provided in § 713.61; and

(2) The requirements in §§ 713.62 and 713.63 are met.

(b) The following uses and practices are eligible on ACR acreage:

(1) Trees or shrubs planted for any purpose other than orchards or vineyards;

(2) Terraces and sod waterways;

(3) Water storage developed for any purpose, including fish or wildlife habitat; or

(4) Filter strips used to reduce siltation in a stream or ditch.

§ 713.70 Insufficient ACR acreage.

Before the final date for reporting crop acreage as provided in Part 718 of this chapter, producers may destroy crops on an acreage to do one of the following:

(a) Decrease the amount of program crop so that the ACR acreage available is sufficient; or

(b) Designate all or part of the destroyed acreage as ACR acreage. The acreage must be eligible land as provided in § 713.61. The acreage shall be devoted to an approved cover or practice in accordance with the provisions of § 713.62 as soon as practicable after destruction of the crop.

§ 713.71 Destroyed crop acreage.

(a) Operators may substitute for the ACR acreage already designated and reported on Form ASCS–578 acreages of small grains or row crops that were destroyed. However, with respect to such substitution of acreages, the following conditions are applicable.

(1) The operator must request the substitution in writing and agree that there will be no deficiency payment made with respect to the production from the substituted acreage;

(2) The land must be determined to be eligible as provided in § 713.61; and

(3) The land must be devoted to an approved cover or practice in accordance with the provisions of § 713.62 as soon as practicable after the substitution.

(b) The substitution of acreages cannot be used to offset a payment reduction as a result of the application of Part 791 of this chapter.

§ 713.72 Provisions applicable to certain small grains.

The following provisions are applicable with respect to 1986 ACR acreage only:

(a) Acreage which was devoted to wheat, barley, or oats and was growing before announcement by the Secretary of the 1986 programs for such crops may be designated as ACR acreage and may be harvested or grazed in accordance with the provisions of this section and § 713.63. This provision shall be applicable only as specified in an announcement by the Secretary.

(b) The acreage shall be subject to the requirements for minimum size as specified in Part 718 of this chapter and the requirement for the care of ACR acreage as set forth in § 713.64.

§ 713.73 Late harvesting.

Harvesting of a crop on ACR acreage may be permitted when all of the following apply:

(a) The crop matured in the preceding year; and

(b) The county committed determines that:

(1) The crop was not harvested because of adverse weather or other conditions beyond the producer's control; and

(2) Harvesting will be completed as soon as practicable.

§ 713.74 Skip rows.

The acreage between rows of the crop is eligible ACR acreage if:

(a) The skip is at least the larger of 4 normal rows or 160 inches from plant to plant, and

(b) The land meets the requirements for eligible land as set forth in § 713.61 and use and care of the acreage as set forth in §§ 713.63 and 713.64.

§§ 713.75–713.96 [Reserved].

§ 713.97 Ineligible land.

(a) Land described in paragraphs (b)-(e) of this section shall not be eligible for: (1) Payments under any program in accordance with this part; (2) designation as ACR; or (3) crediting to a crop in accordance with § 713.102.

(b) Land which the producer does not own, lease, or sharecrop.

(c) Land which the producer does not have authority to use for program crops, such as highway, railroad, or other right of way, airport buffer strips and other similar areas.

(d) Land which is subject to a restrictive easement on behalf of the Farmer's Home Administration which prohibits its use for program crops.

§ 713.98 Participation in Conservation Reserve Program.

(a) Whenever the owner or operator of a farm signs a contract to participate in the Conservation Reserve Program formulated in accordance with sections 1231–1245 of the Food Security Act of 1985:

(1) The farm acreage base, if applicable, and the total of the crop acreage bases, acreage allotments, and marketing quotas established for the farm for the first crop year for which such contract is applicable shall be reduced in the same protection as the ratio of the cropland taken out of production under the conservation reserve contract to the total cropland on the farm. If acreage bases, acreage allotments, and marketing quotas were established for more than one crop, the owner or operator shall determine

which acreage bases, acreage allotments, or marketing quotas shall be reduced to achieve the total reduction required.

(2) The crop acreage bases established for the farm for each succeeding crop year for which the conservation reserve contract is in effect shall be:

(i) Computed in accordance with § 713.7; and

(ii) Then reduced in accordance with instructions issued by the Deputy Administrator.

(3) The amount of the reduction made in accordance with paragraphs (a) (1) and (2) of this section shall be considered as planted to the applicable crop for the purpose of establishing future crop acreage bases.

(4) If there is a contract in effect between CCC and the producers with respect to the annual program for one or more of the corps for which the acreage base is reduced in accordance with paragraph (a)(1) of this section, the operator and producers shall have the option of:

(i) Complying with the contract using the acreage base for the crop after such reduction is determined; or

(ii) Cancelling such contract without liability for liquidated damages.

(b) After the end of the period of a conservation reserve contract, the farm acreage base and crop acreage bases for the next crop year shall be computed in accordance with §§ 713.7 and 713.8.

§ 713.99 Compliance with sodbuster and swampbuster provisions.

(a) Compliance with the sodbuster and swampbuster provisions of sections 1201–1223 of the Food Security Act of 1985 shall be determined in accordance with Part 718 of this chapter and any regulations issued to implement sections 1201–1223 of the Food Security Act of 1985.

(b) Whenever a producer is determined to have failed to comply with sections 1201–1223 of the Food Security Act of 1985 for a particular crop year, such producer shall be ineligible for any payments under this part and shall refund any payments already received in accordance with § 713.103(e).

(c) Notwithstanding any other provisions of this part, any acreage of highly erodible land or converted wetland that is planted to crops in violation of sections 1201–1223 of the Food Security Act of 1985 shall be disregarded in determining acreages planted for harvest, considered planted acreages, acreages devoted to nonprogram crops, and acreages devoted to conservation uses.

§ 713.100 Cross compliance on the farm.

(a) Whenever an acreage reduction is announced by the Secretary with respect to a crop of rice, upland cotton, wheat, or feed grains, and the secretary announces that cross compliance is in effect with respect to such a crop, as a condition of eligibility is in effect with respect to such a crop, as a condition of eligibility for loans, purchases, and payments with respect to such a crop, producers on a farm shall not plant an acreage of rice, upland cotton, ELS cotton, feed grains, or wheat in excess of the acreage base established for the crop for the farm if an acreage reduction program is in effect for such crop of rice, upland cotton, ELS cotton, feed grains, or wheat.

(b) With respect to feed grains and wheat, whenever a set-aside program is announced by the Secretary for one or more of such crops, compliance on the farm with any one commodity program (i.e., wheat or feed grains) may be required as a condition of eligibility for loans, purchases and payments made in accordance with the other commodity programs.

§ 713.101 Offsetting compliance between farms.

(a) Whenever offsetting compliance requirements are made applicable to a crop program for the current year as announced by the Secretary the provisions of paragraphs (b) through (g) of this section shall be applicable.

(b) To be eligible for loans, purchases, and payments authorized for a crop when an acreage reduction or set-aside program is in effect for a crop of feed grains, ELS cotton, or wheat, the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator, the total acreage of the crop on the farm does not exceed the crop acreage base established for such crop.

(c) To be eligible for loans, purchases, and payments authorized for an NCA crop when compliance with the NCA is required for a crop of wheat or feed grains, the landlord, landowner, or operator has an interest as landlord, landowner, or operator that the total acreage of NCA crops on the farm does not exceed the NCA for such farm.

(d) A landowner or landlord is subject to paragraphs (b)-(c) of this section even if the landowner or landlord leases for cash or other consideration all or part of a farm when the lease is executed after the Secretary announces any offsetting compliance requirement.

(e) Any executor, trust officer, or farm manager responsible for the management of a farm shall be considered as the operator of the farm for purposes of paragraphs (b) or (c) of this section if such person receives a percentage of the gross or net farm income exceeding 10 percent of the crops or proceeds thereof for such management service.

(f) For purposes of paragraphs (b) or (c) of this section, all persons or entities in each category listed below shall be considered as the same producer and shall be fully responsible for the action of any person or entity in that category:

(1) Husband and wife, except that the husband and wife may be considered as separate producers if the spouse receiving benefits does not share to any degree in crops or proceeds thereof from the other farm, ownership or managerial control of the other farm is not shared by such spouse, and there have been no changes in the ownership, operation, or managerial control of the other farm which would tend to defeat the purposes of paragraphs (b) or (c) of this section.

(2) Minor children and the parent, guardian, or other person legally responsible for the minor unless the person legally responsible for the minor does not occupy the same household as the minor and shares no interest in the farming operations of the minor.

(3) A partnership and a member of the partnership with over 50 percent interest in the partnership.

(4) A corporation and a stockholder with over 50 percent of the stock of such corporation.

(5) An estate and the sole heir of the estate.

(6) A trust and the sole beneficiary of the trust.

(7) Two or more corporations, estates, trusts, or any combination of such entities which have common stockholders, beneficiaries or heirs who own more than a combined 50 percent interest in each corporation, estate, or trust.

(g) Notwithstanding the foregoing: (1) Any person who places land in a trust the beneficiary of which is such person's parent, brother, sister, spouse, child or grandchild shall be considered the same producer as the trust for purposes of paragraphs (b) or (c) of this section if such person acts as the trustee or trust officer for the trust or in any other way retains any management responsibility for the land subject to the trust even though such person does not receive any share of the crops or proceeds thereof from such land.

(2) When the State committee, or the county committee with the approval of the State committee, determines that a corporation, partnership, or trust was formed, modified or used for the purpose

of circumventing paragraphs (b) or (c) of the section, the corporation and any stockholder of the corporation, the partnership and any member of the partnership, or the trust and any beneficiary of the trust shall be considered as the same producer and shall be fully responsible for the actions of the corporation, partnership, or trust.

(3) A landowner, landlord, or operator may be exempted from complying with paragraphs (b) or (c) of this section with respect to a crop if the county committee determines that a lease which prevents compliance was executed prior to the time that the Secretary announced that offsetting compliance is a requirement of the program for such crop.

(4) A landowner may be exempt from complying with paragraphs (b) or (c) of this section if the landowner has an undivided interest in the farm that does not exceed 50 percent.

(5) A landowner, landlord, or operator may be exempt from complying with paragraphs (b) or (c) of this section for the current year if that person assumed ownership or control of the land after the crop was planted for the current year.

§ 713.102 Determination of farm program acreage.

(a) As a condition of eligibility for loans, purchases and payments in accordance with this part, the operator must submit a report of acreage in accordance with Part 718 of this chapter that lists all crops and land uses which are subject to the contract for all cropland on the farm for the crop year. Except as otherwise provided in this part, all acreage determinations shall be made in accordance with Part 718 of this chapter.

(b) The operator shall designate on the report of acreage filed in accordance with Part 718 of this chapter whether the acreage of nonprogram crops and conserving uses on the farm shall be credited to one or more of the crops of wheat, feed grains, upland cotton, and rice. If the operator fails to so designate such acreages to such crops by the final reporting date established for the farm, the county committee shall allocate the acreage of nonprogram crops and conserving uses in accordance with instructions issued by the Deputy Administrator.

(c) In accordance with instructions issued by the Deputy Administrator, an acreage of nonprogram crops and conserving uses may be credited as an irrigated acreage of wheat or feed grains if: (1) Both irrigated and nonirrigated yields have been established for such crop of wheat or feed grains; (2) all or part of the acreage actually planted to wheat or feed grains for harvest is irrigated; and (3) the acreage of nonprogram crops and conserving uses is irrigated or considered to be irrigated in the current crop year.

(d) The acreage of nonprogram crops and conserving uses credited to the crop shall not exceed the difference between the acreage base for the crop for the crop year and the sum of:

(1) The acreage of the crop planted for harvest;

(2) The acreage which the county committee determines, in accordance with § 713.105, the producer was prevented from planting to the crop due to a natural disaster or similar conditions beyond the producer's control; and

(3) The ACR acreage for the crop.

§ 713.103 General payment provisions.

(a) *Issuance.* The payment of any amount which is due the operator or other producers on a farm shall be made only after the producers are determined to be in full compliance with the contract and applicable regulations.

(b) *Failure to comply fully.* Except as otherwise provided herein and in Part 791 of this chapter, no payment shall be made for a farm or to a producer when there is failure to comply fully with the regulations set forth in this part.

(c) *Payment due producer.* Subject to the provisions of the maximum payment limitation in accordance with § 713.1 and the payment limitation regulations found at Part 795 of this chapter, the total earned payment due each eligible producer under the program shall be determined by multiplying the total earned payment for the farm by the producer's share of such payment.

(d) *Payment declined or producer ineligibility.* If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the payment computed for the farm in accordance with the provisions of this section, such payment or portions thereof shall not become available for any other producer on the farm.

(e) *Unearned payments and overpayments.* A person shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. A late payment charge may be assessed in accordance with the provisions of Part 1403 of this title.

(f) *Combined entities.* Whenever two or more individuals or entities are considered to be one person in accordance with the maximum payment limitation regulations found at Part 795 of this chapter, the controlled substance regulations found at Part 796 of this chapter, or the regulations pertaining to the sodbuster and swampbuster provisions of sections 1201–1223 of the Food Security Act of 1985:

(1) Any payment issued to one such individual or entity in accordance with this part shall be considered a payment to all such individuals and entities; and

(2) Each individual or entity shall be jointly and severally liable for refunding the amounts of any unearned payments or overpayments in accordance with paragraph (e) of this section and for paying any liquidated damages applicable under the contract.

(g) *Making payments.* When diversion or deficiency payments computed for two or more crops on a farm results in the detemination that a payment is due to a producer for one crop but a refund of an unearned payment is due from the producer under the program for another crop, CCC shall, without regard to the regulations on setoffs and withholdings found at Part 13 of this title:

(1) Deduct the amount of the refund from the amount of the payment due;

(2) Pay the producer the remaining amount of the payment due, if any; and

(3) Provide the producer with an explanation of the payment computations and the basis for the reductions.

§ 731.104 Advance payments.

(a) *General.* In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on farm must:

(i) Enter into a contract with CCC to participate in the acreage limitation, set-aside, and land diversion program, if applicable;

(ii) Request the advance payment; and

(2) The farm must not have been detemined to be out of compliance with any of the requirements of the contract or the program at the of payment.

(b) *Advance deficiency payments.* Advance deficiency payments may be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and the time of payment.

(c) *Advance diversion payments.* Advance diversion payments may be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(d) *Refunds.* (1) The provisions of § 713.103(e) are applicable to the amounts of any advance diversion or deficiency payments which are not earned by the producer. However, no late payment charge shall be assessed with respect to producers who have

otherwise complied with the requirements of the program for the crop but have failed to refund to CCC the amount of the advance deficiency payments before the end of the marketing year for the crop when the final deficiency payment rate determined under § 713.108(a) is zero or is less than the advance deficiency payment rate.

(2) In addition to the provisions of § 713.103(e), interest shall be charged on the amount of the advance payment if a producer obtains an advance deficiency or land diversion payment, or both, for a crop on a farm but does not comply with the requirements for any acreage limitation, set-aside, or land diversion program required for the crop on the farm for the year. Interest shall be computed from the date of issuance of the payment to the date such payment is refunded. The rate of interest shall be the rate of interest in effect for CCC commodity loans on the date of the issuance of the payment.

§ 713.105 Disaster credit.

(a) In order to obtain failed acreage or prevented planting credit, the operator must file an application for disaster credit on a form prescribed by the Deputy Administrator. Such application shall be filed with the county committee by a date prescribed by the Deputy Administrator.

(b) In cases of prevented planting, the county committee shall approve prevented planting credit for the acreage which the committee determines that the producer intended to plant to the crop and a natural disaster or other condition beyond the producer's control prevented the planting of the crop.

(c) In cases of failed acreage, the county committee shall approve failed acreage credit for the acreage which the committee determines was planted to the crop with the reasonable expectation of producing a crop and was damaged or destroyed by a natural disaster or other condition beyond the producer's control such that harvesting the crop is not feasible or economical.

(d) When prevented planting or failed acreage credit for a crop is approved for an acreage, except for established practices of double cropping as prescribed by the Deputy Administrator, any later crop planted on such acreage shall not be considered to be planted for any purpose under the programs authorized by this part.

§ 713.106 Established (target) prices.

The established prices for each crop of a commodity will be announced by the Secretary.

§ 713.107 National program acreage.

Whenever an acreage reduction requirement is not in effect for a crop, a national program acreage shall be established and announced by the Secretary. The national program acreage shall equal the number of harvested acres the Secretary estimates will produce the quantity (less imports) that will be used domestically and for export during the marketing year for such crop. The national program acreage which is established for any crop may later be revised if the Secretary determines that an adjustment is necessary, based upon the latest information available, for the purpose of determining an allocation factor for use as provided for in § 713.108.

§ 713.108 Deficiency payments.

(a) *Basis for payment rate.* Except as provided in paragraphs (a) (2) and (4) of this section:

(1) The deficiency payment rate shall be the amount by which the established (target) price exceeds the higher of:

(i) The national average loan rate established for the crop; or

(ii) The national weighted average market price received by producers for the crop during:

(A) The first 5 months of the marketing year for wheat, feed grains, and rice;

(B) The calendar year for upland cotton; and

(C) The first 8 months of the marketing year for ELS cotton.

(2) For each of the 1986 through 1988 crops of wheat and feed grains, the Secretary may announce that, if the national weighted average market price received by producers for the crop during the first 5 months of the marketing year exceeds the amount specified in paragraph (a)(3) of this section, the deficiency payment rate for such crop shall be the amount by which the established "target" price for such crop exceeds the higher of the amount specified in paragraph (a)(3) of this section and the loan rate determined for such crop before any adjustment made by the Secretary to maintain a competitive market position.

(3) The amounts applicable with respect to paragraph (a)(2) shall be:

(i) For wheat, $2.55 per bushel for the 1986 crop; $2.65 per bushel for the 1987 crop; and $2.82 per bushel for the 1988 crop; and

(ii) For corn, $2.04 per bushel for the 1986 crop; $2.19 per bushel for the 1987 crop; and $2.24 per bushel for the 1988 crop, and for grain sorghum, oats, and, if applicable, barley, such amounts as are determined to be fair and reasonable in relation to the amount which is determined for corn.

(4) For wheat and feed grains, whenever the Secretary announces a reduction in the loan and purchase level for a crop in order to maintain a competitive market position for such crop, the deficiency payment rate shall be increased by such amount as is determined necessary to provide the same total return to producers as if the loan and purchase level had not been reduced, taking into consideration payments made in accordance with paragraph (a)(2) of this section. In accordance with section § 713.1, payments made as a result of such increase shall not be subject to the $50,000 maximum payment limitation. In such case, the amount of the deficiency payment rate shall be the smaller of:

(i) The difference between the national average loan rate for the crop before the reduction by the Secretary and the national weighted average market price received by producers during the entire marketing year, or

(ii) The difference between the national average loan rate before reduction and the national average loan rate after reduction by the Secretary.

(b) *Farm program acreage for payment.* (1) If no acreage reduction requirement is in effect for a crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year multiplied by an allocation factor. The allocation factor shall be determined by dividing the national program acreage for the crop, as specified in § 713.107, by the estimated national current year acreage for harvest of the crop. However:

(i) The allocation factor shall not be less than 80 percent for each of the crops of barley, corn, grain sorghum, oats, rice, and wheat nor more than 100 percent for such crops and upland and ELS cotton;

(ii) The farm program acreage shall not be reduced by the allocation factor if the current year acreage of the crop on the farm is reduced voluntarily from the acreage base for the crop by a percentage announced by the Secretary; and

(iii) The allocation factor shall be adjusted in accordance with instructions issued by the Deputy Administrator to provide equity for a farm for which the reduction in the current year's acreage is insufficient to exempt the farm from the application of the allocation factor.

(2) If an acreage reduction program or required land diversion program is in effect for the crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year,

not to exceed the permitted acreage. However, for wheat, feed grains, upland cotton, and rice, if an acreage reduction program is in effect, and the acreage of the crop planted for harvest is less than 92 percent of the permitted acreage for the crop, the farm program acreage may be increased, but not to exceed 92 percent of the permitted acreage of the crop, as follows:

(i) If the acreage of the crop planted for harvest is less than 50 percent of the permitted acreage of the crop, the farm program acreage shall not be increased,

(ii) If the acreage of the crop planted for harvest is at least 50 percent of the permitted acreage of the crop for the year, the farm program acreage shall be the sum of:

(A) The acreage of the crop planted for harvest, plus

(B) The amount by which the sum of the acreages of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102 exceeds 8 percent of the permitted acreage for the crop; and

(iii) If a State or local agency has imposed in an area of the State or county a quarantine on the planting for harvest of any crop for which price support is available, the State committee may recommend and the Deputy Administrator may approve that the acreage subject to the quarantine be eligible for purposes of program payments as follows:

(A) Acreage subject to the quarantine may be credited to a crop in accordance with § 713.102, and

(B) The farm program acreage on a farm where such acreage is credited to the crop shall be the sum of the acreage of the crop planted for harvest and the sum of the acreages of nonprogram crops and conservation uses credited to a crop in accordance with § 713.102 in excess of 8 percent of the permitted acreage for such crop.

(c) *Payment computation.* Deficiency payments shall be determined for each crop by multiplying the farm program acreage by the farm program payment yield as provided for in § 713.6 by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(d) *Date of payment.* Deficiency payments will be made to producers as soon as practicable after the following dates:

(1) *Barley, oats and wheat.* December 1 of the current year.

(2) *Upland cotton and rice.* February 1 following the current year.

(3) *Corn and grain sorghum.* March 1 following the current year.

(4) *ELS cotton.* May 15 following the current year.

(5) *Increased payments.* If applicable, the increased payments for feed grains and wheat prescribed in paragraph (a)(4) of this section shall be made as soon as practicable after the following dates:

(i) *Wheat, barley, and oats.* July 1.

(ii) *Corn and grain sorghum.* October 1.

§ 713.109 Division of program payments.

(a) *General.* Each person on a participating farm shall be given the opportunity to participate in the program for a crop in proportion to such person's interest in the program crop or the interest such person would have had if the crop had been produced. The name of such person shall be listed on the contract. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled shall also be shown on the contract as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

(b) *Division of program payment.* Each producer's share of the farm program payment for a crop shall be based on the following:

(1) The producer's share of the crop or the proceeds thereof, or

(2) If no crop is produced, the share which the producer would have received had the crop been produced. Notwithstanding the preceding sentence, a different division of payment which is fair and equitable may be approved by the county committee if all of the producers who would otherwise share in the payment agree to the different division in writing. Such different division of payments may also be approved by the county committee, with the concurrence of a representative of the State committee, even though all of the producers do not agree with respect to the division of payment. In addition, a different division of payments may be approved by the county committee when required by § 713.11.

(c) *Refund of payments not properly divided.* Payments which producers receive with respect to which they are determined not to be entitled shall be refunded to CCC as required by § 713.103. In the event of fraud, the producers shall be subject to the provisions relating to fraudulent representation as set forth at § 713.132.

§§ 713.110–713.129 [Reserved]

§ 713.130 Eligibility for regular prevented planting and reduced yield payments.

(a) Prevented planting payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and if prevented planting crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(b) Reduced yield payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and reduced yield crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(c) Prevented planting payments and reduced yield disaster payments are authorized to be made to producers of wheat, feed grains, upland cotton and rice only if:

(1) Such a producer has entered into a contract with CCC for the applicable crop of the commodity on a farm;

(2) The operator and all producers have been determined to be in compliance with such contract; and

(3) The operator of the farm submits a Form ASCS–574, Application for Disaster Credit, in accordance with instructions issued by the Deputy Administrator, and also submits a report of production and disposition in accordance with § 713.6(d).

(d) In addition to the requirements of paragraph (c) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity because of a drought, flood, other natural disaster or other condition beyond the control of the operator or other producer.

(e) Regular disaster payments shall be computed in accordance with § 713.131.

§ 713.131 Regular disaster payment computations.

(a) *Prevented planting.*—(1) *Payment rate.* The payment rate is one-third of the established (target) price as provided for in § 713.106.

(2) *Acreage eligible for payment.* The acreage eligible for payment equals the smallest of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster of other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction or set-aside requirement is in effect or on farms participating in a land diversion or wheat grazing and hay program, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Insurance Act is not available.

(3) *Payment computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm program payment yield as provided in § 713.6 times the prevented planting payment rate.

(b) *Reduced yield.*—(1) *Payment rate.* The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided in § 713.106.

(2) *Payment computation.* Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the smaller of the following computations:

(i) The result determined by multiplying the acreage of the crop on the farm by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6, and subtracting the determined production for the farm therefrom; or

(ii) The result determined by multiplying the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6, and subtracting the determined production for the eligible acreage therefrom.

(3) *Determining production.* The production from any acreage shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production for the purpose of determining eligibility for and the amount of reduced yield disaster payments; and

(ii) The farm program payment yield shall be used with respect to any acreage for which the production cannot be determined. However, if the county committee determines that the acreage was affected by a natural disaster, the farm program payment yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6 or the actual average yield from the harvested acreage of the crop.

§§ 713.132–713.149 [Reserved]

§ 713.150 Provisions relating to tenants and sharecroppers.

(a) Program payments shall not be approved for the current year if it is determined that any of the conditions specified below exist:

(1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number on the farm in the year before the current year in anticipation of or because of participating in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed-rent tenant unless: (A) Such tenant was living on the farm in the year immediately preceding the current year, or (B) at least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease, contract, agreement, or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would otherwise have had under the program,

(iii) To reduce the size of the tenant's or sharecropper's production unit, or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC.

(b) Notwithstanding any other provision of this section, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are not classified as employees subject to the minimum wage provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

§ 713.151 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer whose name appears on the contract, the payment due such producer shall be made to such producer's successor, as determined in accordance with the regulations found at Part 707 of this chapter.

(b) When any person who had an interest as producer of the crop or would have had an interest in the crop as a producer if the crop had been planted (the "predecessor") is succeeded on the farm by another producer (the "successor") after a contract has been executed, any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the county committee agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract. If the predecessor and successor fail to agree on a revised contract and the predecessor has become unable to carry out the producer's responsibilities under the contract, CCC may terminate the contract with respect to the predecessor and enter into a new contract with the successor.

(c) In any case in which the amount of any payment due any successor producer has been paid previously to another producer, such payment shall not be paid to the successor unless it is recovered from the producer to whom it has been paid or payment to the successor is authorized by the Deputy Administrator.

§ 713.152 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program

determination shall not be entitled to payments under the crop program with respect to which the representation was made and shall refund to CCC all payments received by such producer with respect to such farm and such crop program and shall be liable for liquidated damages in accordance with the contract.

(b) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly: (1) Adopted any scheme or device which tends to defeat the purpose of the program, (2) made any fraudulent representation, or (3) misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the contract.

§ 713.153 Setoffs and assignments.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing setoffs and withholdings found at Part 13 of this title shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at Part 709 of this chapter.

§ 713.154 Payments by commodities and commodity certificates and refunds.

(a) Payment under the programs authorized by this part may be made in the form of commodities or commodity certificates in accordance with Part 770 of this chapter.

(b) Whenever it is determined in accordance with § 713.103 that a producer was overpaid or received payments that were not earned, and such payments were in the form of commodities or commodity certificates, the producer shall refund the amount of the overpayment either by returning commodity certificates in an amount equal to the overpayment or by making cash payments to CCC.

§ 713.155 Appeals.

A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with § 713.154 may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at Part 780 of this chapter.

§ 713.156 Performance based upon advice or action of county or State Committee.

The provisions of Part 791 of this chapter with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 713.157 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 713) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Numbers 0560–0092, 0560–0650, 0560–0091, 0560–0030, and 0560–0071.

2. Part 770 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 770—COMMODITY CERTIFICATES, IN KIND PAYMENTS, AND OTHER FORMS OF PAYMENT

Sec.

Authority: Secs 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 308, 401, 501, 601, 1002, 1004, 1005, 1234 of Pub. L. 99–198.

§ 770.1 Applicability.

This part shall be applicable to payments and loans made in accordance with the programs administered by the Commodity Credit Corporation (CCC) or the Agricultural Stabilization and Conservation Service (ASCS) which are authorized by Title 7 of the Code of Federal Regulations, as determined and announced by the Secretary of Agriculture or a designee of the Secretary. The definitions of the terms applicable to 7 CFR Part 713 set forth at § 713.3 also shall be applicable to this part.

§ 770.2 Payments in lieu of cash payments.

(a) CCC may, at its option, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or ASCS, CCC may make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

(1) By delivery of a commodity to a person at a warehouse or other similar facility;

(2) By transfer of negotiable warehouse receipts;

(3) By the issuance of certificates which CCC shall redeem in accordance with this part;

(4) By the acquisition and use of commodities pledged as collateral for CCC loans;

(5) By the use of commodities owned by CCC; and

(6) By such other methods as CCC determines appropriate to enable the producer to receive payments so as to assure that the producer receives the same total return as if the payments had been made in cash.

(c) The value of the payment made in the manner set forth in paragraph (b) shall be determined by CCC.

§ 770.3 Payments to persons with outstanding CCC loans.

(a) Persons with outstanding CCC loans who are eligible to receive payments from CCC may be required to liquidate such loans in accordance with this section in order to be eligible to receive a payment authorized by § 770.2.

(b) A person with an outstanding CCC loan must, unless otherwise agreed upon by the person and CCC, redeem and sell to CCC a quantity of the commodity pledged as collateral for a CCC loan, as determined by CCC, which is in an amount equivalent to the value of the cash payment which would otherwise be made to the producer. If the person has more than one outstanding CCC loan, CCC may, be contract or otherwise, prescribe which loan collateral the person shall be required to redeem in order to receive payment. The quantity required to be redeemed may be adjusted by CCC for unearned storage costs, transportation costs, handling costs and any other costs determined by CCC to affect the value of such commodity. For the purpose of determining these adjustments, a commodity which has been pledged as collateral for a CCC loan shall, at redemption, be considered to have the same grade and other characteristics affecting its quality which it was considered to have had at the time the commodity was pledged as collateral for

such CCC loan. After redemption and the subsequent sale to CCC of the commodity pledged as collateral for such CCC loan, CCC shall make available to the person a like quantity of the commodity, as may have been adjusted by CCC in accordance with this part.

§ 770.4 Commodity Certificates.

(a) CCC may issue commodity certificates denominated in cash amounts redeemable for inventory of CCC. Commodity certificates shall be subject to the provisions of this part, and to any terms, conditions and restrictions stated on the certificate. Commodity certificates shall state an "expiration date" and may state a "first transfer deadline." The "expiration date" shall be the last date on which a person may present the certificate to CCC for redemption in accordance with paragraphs (b)(4) and (b)(5) of this section. The "first transfer deadline" shall be the last date on which the original recipient of a certificate may transfer such certificate to another person.

(b)(1) The original recipient and any subsequent holder may transfer a commodity certificate to any other person. Such transfer may only be effected by a restrictive endorsement on the back of the certificate. CCC will not honor any certificate bearing any endorsement to "bearer" or any other nonrestrictive endorsement, or otherwise transferred in a manner contrary to the regulations contained in this part. Commodity certificates shall be redeemable for such commodities as are made available by CCC and as provided herein. CCC may discount or not accept commodity certificates presented for redemption after the expiration date of such certificate, as determined by CCC.

(2) CCC may require holders of a commodity certificate to redeem such certificate for commodities owned by CCC which are stored by such holder without making such commodities or kind of commodities available for redemption by other holders of commodity certificates.

(3) If a commodity certificate contains a first transfer deadline date, the person to whom the certificate is issued may not redeem the commodity certificate for commodities owned by CCC. The original recipient of a commodity certificate which bears a first transfer deadline date may, only during the ten business days following the first transfer deadline date, submit such certificate at the issuing county ASCS office in exchange for payment by check in the amount of the commodity certificate. Neither ASCS nor CCC will honor a certificate presented by the original recipient after such period, except as otherwise may be authorized by CCC.

(4) Except as otherwise provided in this section or on the certificate, any holder may submit commodity certificates for redemption at any time prior to the expiration date of the certificate if the holder has an amount of commodity certificates sufficient to acquire a carload lot of the applicable commodity, or any other quantity as may be determined by CCC. CCC shall determine the value of CCC-owned commodities made available for redemption of commodity certificates.

(5) Subsequent holders of commodity certificates who do not possess commodity certificates in the amount specified in paragraph (b)(4) of this section may, but only once during any calendar month and in no event later than the expiration date of any such certificate, submit such certificates to CCC. CCC will, at CCC's option, pay such holder by check in the amount of the certificate or transfer to such holder title to commodities owned by CCC.

(6) Title to commodities owned by CCC which are transferred to a holder of a commodity certificate as the result of the redemption of a commodity certificate shall be transferred in store. Such a person shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC. The transfer of title to such commodities shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government.

(7) At its option, CCC may allow any holder of a commodity certificate to use such commodity certificate to redeem, at any time before the expiration date of the certificate, commodities pledged as collateral for CCC loans, except that, notwithstanding any provision of any such certificate, no person may before August 1, 1986 use a commodity certificate to redeem upland cotton pledged as collateral for a CCC loan. CCC shall determine the value of commodities so pledged for purposes of redemption by a commodity certificate.

(8) State law and regulations shall not be applicable to the issuance, transfer, or redemption of commodity certificates. Commodity certificates, or the proceeds thereof, may not be subjected to any claim of lien by any creditor except agencies of the U.S. Government.

§ 770.5 In Kind Payments.

(a) Subject to the provisions of §§ 770.2 and 770.3, CCC may make payments in the form of commodities. Quantities of commodities made available as payment shall be based upon the value of the commodity, as determined by CCC. Such quantity may be adjusted by CCC to reflect the location, quality, and other similar factors which CCC determines to affect the value of the commodity.

(b) The transfer of title to commodities made available in accordance with paragraph (a) of this section shall be in store and shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government. The recipient of such commodities shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC.

§ 770.6 Miscellaneous provisions.

The following provisions of this title shall apply to this part:

(a) Part 13, Setoffs and Withholding.
(b) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.
(c) Part 718, Determination of Acreage and Compliance.
(d) Part 780, Appeal Regulations.
(e) Part 790, Incomplete Performance Based Upon Actions or Advice of an Authorized Representative of the Secretary.
(f) Part 791, Authority to Make Payments When There has been a Failure to Comply Fully with the Program.
(g) Part 795, Payment Limitation.
(h) Part 796, Denial of Program Eligibility for Controlled Substance Violations.
(i) Part 1403, Interest on Delinquent Debts.
(j) All other parts of the Code of Federal Regulations which are made applicable to this part.

PART 795—[AMENDED]

3. The authority citation for Part 795 is revised to read as follows:

Authority: Sec. 1001, Pub. L. 98–199, 7 U.S.C. 1308; 99 Stat. 1444.

3a. Part 795 of Chapter VII of Title 7 of the Code of Federal Regulations is amended as follows:

A. Section 795.2 is amended by adding paragraphs (c) and (d) to read as follows:

§ 795.2 Applicability.

* * * * *

(c) The limitation shall not be applicable to payments made to States, political subdivisions, or agencies thereof for participation in the programs

on lands owned by such States, political subdivisions, or agencies thereof so long as such lands are farmed primarily in the direct furtherance of a public function. However, the limitation is applicable to persons who rent or lease land owned by States, political subdivisions, or agencies thereof.

(d) The limitation shall not be applicable to payments made to Indian tribal ventures participating in the programs where a responsible official of the Bureau of Indian Affairs or the Indian Tribal Council certifies that no more than the program payment limitation shall accrue directly or indirectly to any individual Indian and the State committee reviews and approves the exemption.

B. Section 795.15 is revised to read as follows:

§ 795.15 Determining whether agreement is a share lease or a cash lease.

(a) *Cash lease.* If a rental agreement contains provisions for a guaranteed minimum rental with respect to the amount of rent to be paid to the landlord by a tenant, such agreement shall be considered to be a cash rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(b) *Share lease.* If a rental agreement contains provisions that require the payment of rent on the basis of the amount of the crop produced or the proceeds derived from the crop, such agreement shall be considered to be a share rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

C. Section 795.24 is added to read as follows:

§ 795.24 Relief.

If a producer relied on a county committee and/or State committee "person" determination for a crop year and higher reviewing authority makes a more restrictive determination, the Deputy Administrator may grant relief only for such crop year if the producer was not afforded an opportunity to exercise other alternatives with respect to the producer's farming operation and the program provisions and the county committee has determined that the producers acted in good faith based upon the original "person" determination.

4. Part 796 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 796—DENIAL OF PROGRAM ELIGIBILITY FOR CONTROLLED SUBSTANCE VIOLATION

Sec.

Authority: Sec. 1764 of Pub. L. 98–199, 21 U.S.C. 881a, 99 Stat. 1652; and Annual Agricultural Appropriation Acts.

§ 796.1 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) "Controlled Substances" means the term as set forth in accordance with 21 CFR Part 1308.

(b) "Person" means an individual, joint stock company, corporation, association, trust, estate, or other legal entity. In order to be considered a separate person for the purpose of this part, the individual or other legal entity must:

(1) Have a separate and distinct interest in the land or the crop involved,

(2) Exercise separate responsibility for such interest, and

(3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

(c) "State" means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

§ 796.2 Prohibition against payments to producers or participants.

(a) Any person who, on or after December 23, 1985, is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for:

(1) As to any commodity produced by such person during that crop year, and during the four succeeding crop years:

(i) Any price support loan and purchase agreement or other payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), or any other Act;

(ii) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(iii) A disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*); and

(2) A payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity that is:

(i) Produced during that crop year, or any of the four succeeding crop years, by such person; and

(ii) Acquired by the Commodity Credit Corporation.

(b) Notwithstanding any other provision of Title 7 of the Code of Federal Regulations, with respect to all programs set forth in such title administered by the Agricultural Stabilization and Conservation Service under which production or other payments, including wheat marketing certificates, are made to program participants, no such payment for any crop year through the 1985 crop year shall be made after August 10, 1971, to any producer or program participant who, after August 10, 1971, harvests or knowingly permits to be harvested for illegal use, marihuana, or other such prohibited drug-producing plants on any part of the lands owned or controlled by such producer or participant. Prohibited plants include marihuana (*cannabis sativa*), opium poppies (*papauer somniferum*), coca bushes (*erythroxylum coca*), cacti of the genus *lophophora*, and other drug producing plants, the planting or harvesting of which is prohibited by Federal or State law.

§ 796.3 Protecting the interests of landlords, tenants, and sharecroppers, and special rule for corporations, partnerships, and trusts.

The tenant, sharecropper, landlord, or any producer on the farm separate from the person determined to be ineligible for program benefits in accordance with § 796.2 shall remain eligible for any or all of the program benefits listed in § 796.2 unless such tenant, sharecropper, landlord, or any such producer on the farm:

(a) Is also convicted of planting, cultivating, growing, producing, or storing a controlled substance; or

(b) Is otherwise determined to be ineligible to receive any or all of the benefits listed in § 796.2.

(c) Notwithstanding any other provision of this section, if any person denied benefits under this part is a shareholder of a corporation, partner in

a limited partnership, or beneficiary of a trust, benefits for which the corporation, limited partnership, or trust is eligible shall be reduced, for the appropriate period, by a percentage equal to the total percentage of ownership of such individual.

CHAPTER XIV

PART 1421—[AMENDED]

5. Part 1421 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended as follows:

A. The authority citation for Part 1421 is revised to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 1053, as amended 1054, as amended (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425); secs. 101A, 105C, and 107D of Pub. L. 99–198.

B. In Part 1421, the Table of Contents and the Subpart headings to §§ 1421.1 through 1421.30; §§ 1421.50 through 1421.60; §§ 1421.90 through 1421.100; §§ 1421.210 through 1421.220; §§ 1421.245 through 1421.254; §§ 1421.280 through 1421.291; §§ 1421.335 through 1421.345; §§ 1421.365 through 1421.374; and §§ 1421.460 through 1421.471 are amended by removing "1985" wherever it appears and inserting in lieu thereof "1986".

C. The table of contents to Subpart—General Regulations Governing Price Support for the 1986 and Subsequent Crops is amended by adding § 1421.30 as follows:

* * * * *

§ 1421.30 Recourse loans.

* * * * *

D. Part 1421 is amended by removing the following obsolete Subparts and Sections.

Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops (§ 1421.530–1421.544); Subpart—Regulations Governing the Rice Reserve Program for the 1976 and Subsequent Crops (§ 1421.558–1421.572); Subpart—Regulations Governing the Grain Reserve Program for 1979 and Subsequent Crops and Alternative Program for 1979 and Prior Crops (§ 1421.630–1421.644); Subpart—Regulations Governing the Grain Reserve Program for 1980 and Subsequent Crops and Alternative Program for 1980 and Prior Crops (§ 1421.670–1421.684); and Subpart—Regulations Governing a Recourse Loan Program for 1980-Crop Aflatoxin-Contaminated Corn (§ 1421.800–1421.806).

E. In Part 1421, the first sentence of § 1421.1 is amended by removing "1985" and inserting in lieu thereof "1986".

F. In Part 1421, §§ 1421.50, 1421.90, 1421.210, 1421.245, 1421.280, 1421.335, 1421.365, 1421.460, 1421.745 are amended by removing "1985" wherever it appears and inserting in lieu thereof "1986".

G. Section 1421.3(g) is revised to read as follows:

§ 1421.3 Eligible producer.

* * * * *

(g) *Approved cooperative.* A cooperative marketing association which is approved by the Executive Vice President, CCC, or the Executive Vice President's designee, pursuant to Part 1425 of this chapter, to obtain price support for a crop of barley, corn, oats, rice, rye, sorghum, soybeans, and wheat may obtain price support on the eligible production of such crop of the commodity on behalf of its members. When used in this subpart and on applicable forms, the term "producer" means both an eligible producer as defined by paragraphs (a), (b), and (c) of this section and an approved cooperative association.

H. Section 1421.18 (a) and (c) is revised to read as follows:

§ 1421.18 Release of the commodity under loan.

(a) *Obtaining release—farm storage loan.* A producer shall not dispose any commodity which is pledged as collateral for a loan until prior written approval for such disposition has been provided by the county committee in accordance with § 1421.8. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released: (1) The principal amount of the loan which is outstanding plus interest, or (2) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan. CCC will permit removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer. When the proceeds of the sale of the commodity are needed to repay a farm storage loan, the producer must request and obtain prior written approval of the county ASCS office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county ASCS office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county ASCS office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Marketing Authorization, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity removed with such authorization. Such liquidated damages shall be assessed beginning on the earlier of: (i) The expiration date of such marketing authorization, or (ii) the date delivery of the commodity to the buyer is completed, and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the quantity removed with such authorization by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts on the date that liquidated damages are first assessed.

* * * * *

(c) *Obtaining release, warehouse storage loans.* (1) The producer may arrange with the county ASCS office for the release of all or part of the commodity which is pledged as collateral for a warehouse storage loan at or prior to the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC: (i) The principal amount of the loan plus interest, or (ii) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loans. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421.5(b), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization

which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment. (2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, the county committee may at any time during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse storage loan. Movement of the commodity must be to a warehouse that is located in the normal commercial line of marketing for the commodity and must not interfere with or abridge CCC's security interest in the pledged commodity. Any such approval shall be subject to all the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt. Warehouse receipts issued by the subsequent warehouse must: (i) Represent a commodity which is deemed to be stored commingled; (ii) be negotiable; and (iii) represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the subsequent warehouse. The quantity of the commodity eligible to be pledged as collateral for the new warehouse storage loan shall not exceed the quantity approved for reconcentration as shown on Form CCC–699, Reconcentration Agreement and Trust Receipt. Liability for any loss in quality or quantity shall be resolved solely between the warehouseman and the producer without any liability on the part of CCC. (3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC: (i) The principal amount of the loan, plus interest and applicable charges, or (ii) if CCC so announces, an amount less than the principal amount of the loan under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early redemption charges which are applicable in accordance with § 1421.733 and § 1421.753. Except for wheat, barley, sorghum, or rye, commodities which are reconcentrated shall be transported without cost to CCC. CCC shall increase or decrease the loan to the producer by the amount by which the loan value of the commodity stored in the subsequent warehouse is greater than or less than the value of the original warehouse storage loan. The maturity date of the new warehouse storage loan shall be the maturity date applicable to the original warehouse storage loan.

* * * * *

I. A new § 1421.30 is added to Subpart-General Regulations Governing Price Support for the 1986 and Subsequent Crops to read as follows:

§ 1421.30 Recourse loans.

CCC may make recourse loans available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

J. Section 1421.302(b) is revised to read as follows:

§ 1421.302 Eligible rice.

* * * * *

(b) *Warehouse-stored loan grade requirements.* In order to be eligible for a warehouse-stored loan, the rice must also meet the following requirements: (1) The rice must grade No. 5 or better (rice of special grades shall not be eligible), and (2) the rice must not have moisture content of over 14.0 percent.

* * * * *

K. A new § 1421.309 is added to read as follows:

§ 1421.309 Marketing Loans and Marketing Certificates.

(a) *Producers with outstanding 1985 rice loans on April 15, 1986.* Producers with outstanding 1985 crop rice price support loans on April 15, 1986, may repay such loans at a level that is the lesser of: (1) The 1985 level of price support or (2) the prevailing world market price for rice, as determined and announced by CCC. As a condition of permitting a producer to repay such a loan, the producer may be required to purchase commodity certificates, which are made available in accordance with Part 770 of this title, in an amount equal in value to an amount that does not exceed the difference between the principal amount of the loan obtained by the producer and the amount of the loan repayment.

(b) *Producers without outstanding 1985 rice loans on April 15, 1986.* (1) Producers of the 1985 crop of rice who (i) although eligible to obtain a CCC price support loan or purchase agreement did not obtain such a loan or purchase agreement and have not sold or delivered such rice under a sales contract and (ii) have produced rice that is not eligible to be pledged as collateral for a CCC price support loan and have not sold or delivered such rice under a sales contract, shall be eligible for a payment made in accordance with paragraph (b)(2) of this section.

(2) Eligible producers may receive a payment computed by multiplying the payment rate by the quantity of rice that the producer has not sold or delivered under a sales contract. The payment rate shall be the amount by which the loan level determined for the 1985 crop of rice exceeds the level at which a loan may be repaid in accordance with paragraph (a) of this section.

(c) *1986 and subsequent crop years.* A producer may repay a loan at a level that is the lesser of the loan level determined for such crop or the higher of: (1) The loan level determined for such crop multiplied by 50 percent for the 1986 and 1987 crops; 60 percent for the 1988 crop and 70 percent for the 1989 and 1990 crop; or (2) the prevailing world market price, as determined by CCC. As a condition of permitting a producer to repay such a loan, the producer may be required to purchase commodity certificates, which are made available in accordance with Part 770 of this title, equal in value to an amount that does not exceed one-half the difference between the principal amount of the loan obtained by the producer and the amount of the loan repayment.

(d) *Commodity certificates.* If CCC determines that at any time between August 1, 1986 and July 31, 1991, the world market price for a class of rice, as determined by CCC, is below the current loan repayment rate for such class of rice, CCC shall issue commodity certificates, made available in accordance with Part 770 of this title, to persons who have entered into an agreement with CCC with respect to the issuance and redemption of such certificates. The value of such certificates shall be based upon the difference between: (1) The loan repayment rate for such class of rice and (2) the prevailing world market price of such class of rice, as determined by CCC.

(e) *August 1, 1986 rice inventory payments.* CCC may issue commodity certificates to persons with rice in inventory on August 1, 1986, in such amounts as CCC determines necessary to make such rice in inventory available on the same basis as 1986 crop rice.

(f) Payments made under this section shall be subject to such terms, conditions, and certifications as may be determined to be necessary by CCC.

L. Section 1421.97(c) is added to read as follows:

§ 1421.97 Availability.

* * * * *

(c) A producer may be allowed to repay a loan at such level as may be announced by CCC that is the lesser of: (1) The loan level determined for such crop or (2) the higher of (i) 70 percent of such level; (ii) if the loan level was reduced in accordance with section 105C(a)(3) of the Agricultural Act of 1949, as amended, 70 percent of the level that would have been in effect, but for such reduction; or (iii) the prevailing world market price for corn as determined by CCC.

M. In Part 1421, §§1421.57, 1421.217, 1421.252, and 1421.342, are amended by adding to each such section a new paragraph (c) to read as follows:

§ 1421.—Availability.

* * * * *

(c) As may be announced by CCC, a producer may be allowed to repay a loan at a level in accordance with § 1421.97(c).

N. Section 1421.372(c) is added to read as follows:

§ 1421.372 Availability.

* * * * *

(c) A producer may be allowed to repay a loan at such level as may be announced by CCC that is the lesser of: (1) The loan level determined for such crop or (2) the prevailing world market price for soybeans, as determined and announced by CCC.

O. Section 1421.467(c) is added to read as follows:

§ 1421.467 Availability.

* * * * *

(c) A producer may be allowed to repay a loan at such level as may be announced by CCC that is the lesser of: (1) The loan level determined for such crop or (2) the higher of: (i) 70 percent of such level; (ii) if the loan level was reduced in accordance with section 107D(a)(4) of the Agricultural Act of 1949, 70 percent of the level that would have been in effect, but for such reduction; or (iii) the prevailing world market price for wheat, as determined by CCC.

6. Part 1425 of Chapter XIV of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.

Authority: Secs. 4, 5, and 12 of the Commodity Credit Corporation Charter Act as amended, 62 Stat. 1070, as amended, 1072, 1073 (15 U.S.C. 714b, 714c, and 714j); secs. 101, 201, 203, 301, and 401 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 70 Stat. 212, 63 Stat. 1053, as amended, 1054, as amended (7 U.S.C. 1444 (a), 1441, 1446d, 1447, 1421(a)).

§ 1425.1 General provisions.

This part sets forth the terms and conditions which a cooperative marketing association ("cooperative") must meet in order to be approved to obtain from the Commodity Credit Corporation (CCC) price support on behalf of its members for the 1986 and subsequent crops of a commodity. A cooperative meeting such terms and conditions may obtain price support with respect to any crop of a commodity for which a price support program is in effect if regulations issued with respect to such price support program incorporate the provisions of this part or permit a cooperative which meets the provisions of this part to participate in the price support program for a crop of such commodity.

§ 1425.2 Administration.

On behalf of CCC, Agricultural Stabilization and Conservation Service (ASCS), will administer the provisions of this part under the general direction and supervision of the Deputy Administrator, State and County Operations, ASCS. In the field, the provisions of this part will be administered by the State and county ASC committees.

§ 1425.3 Definitions.

(a) *Active member* means a member who has utilized the services offered by a cooperative in one of the three preceding cooperative fiscal years or such shorter period as may be provided in the cooperative's articles of incorporation or bylaws.

(b) *Approved cooperative* means a cooperative that has been approved by the CCC to participate in price support programs authorized with respect to one or more authorized commodities.

(c) *ASCS* means the Agricultural Stabilization and Conservation Service, an agency of the U.S. Department of Agriculture.

(d) *Authorized commodity* means those commodities for which an approved cooperative may apply for price support, including barley, corn, cotton, honey, oats, rice, rye, seed cotton, sorghum, soybeans, and wheat.

(e) *CCC* means the Commodity Credit Corporation.

(f) *Close relative* means a spouse or a person related as child, parent, brother, or sister, by blood, adoption, or marriage, and shall include in-laws within such categories of relationship.

(g) *Eligible commodity* means a commodity which meets the eligibility requirements applicable to such commodity set forth in Chapter XIV of this title which is delivered to, or which is acquired by, a cooperative.

(h) *Member* means a person who is a member of an agricultural cooperative or an agricultural cooperative member of another cooperative. A person applying for membership in an agricultural cooperative must have: (1) Fully paid for the membership stock or earned equity credits; (2) be accepted by the cooperative; and (3) be entitled to all membership rights including voting and holding office except where the law of the State in which the cooperative is incorporated provides for stock subscribers as members but does not allow them to hold office.

(i) *Person* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

(j) *Producer* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

§ 1425.4 Application for approval.

(a) *Application.* In order for a cooperative to obtain price support with respect to the 1986 and subsequent crops of authorized commodities, a cooperative must submit an application for approval with respect to each such authorized commodity to CCC.

(b) An application must include:

(1) A completed Form CCC–846;

(2) The latest financial audit of the cooperative including any accompanying notes, schedules, or exhibits, certified by a certified public accountant from the books of original entry as fairly representing the financial condition of the cooperative;

(3) A copy of the cooperative's articles of incorporation or articles of

association, bylaws, all marketing agreements for eligible commodities and any other document which is requested by CCC with respect to the cooperative's methods of conducting business which an official of the cooperative has certified as being current;

(4) A conflict of interest statement (Form CCC–846–2) for each director, officer, and principal employee;

(5) Resolutions made by the cooperative's board of directors which provide that the cooperative will abide by provisions of this part and the nondiscrimination provisions thereof;

(6) A statement of any cooperative transactions that either have occurred in the preceding year before the initial application for approval is submitted or are contemplated by the cooperative as provided in § 1425.12;

(7) A detailed description of the method by which proceeds from a pool of eligible commodities for which price support is obtained will be distributed as provided for in § 1425.17.

(8) Other information requested by CCC concerning the organizational, operational, financial or any other aspect of the cooperative determined by CCC to be necessary to act upon the application for approval.

(c) *Annual recertification.* An approved cooperative must submit the following information to CCC:

(1) A completed Form CCC–846–1;

(2) The cooperative's latest complete financial audit;

(3) The numbers of active and inactive members;

(4) A statement showing the allocated equity in the cooperative owned by active members, inactive members, and others, and the unallocated equity in the cooperative;

(5) The names of any members who own in excess of 10 percent of the equity of the cooperative and the amount owned by each;

(6) The quantity of each eligible commodity delivered to the cooperative for marketing and the portion of such commodities received from active members during the prior year;

(7) The quantity of each eligible commodity tendered by the cooperative to CCC as security for a price support loan and the quantity of such commodities redeemed during the prior year;

(8) The quantity of each commodity tendered to CCC for price support purchase during the prior year; and

(9) A statement of any cooperative transactions that either have occurred in the cooperative's prior fiscal year of operations or are contemplated to occur in the cooperative's current fiscal year as provided for in § 1425.12.

(d) *Changes.* An approved cooperative shall promptly furnish to CCC:

(1) Any changes in the articles of incorporation, bylaws, and marketing agreements of the cooperative;

(2) Any resolutions affecting price support operations;

(3) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.12(d);

(4) Any change in pooling operations with an explanation of the change and why such change was necessary; and

(5) Additional information as may be requested by CCC at any time with respect to the continued approval by CCC of the cooperative as an approved cooperative in accordance with this part.

§ 1425.5 Confidentiality.

Information submitted to CCC with respect to trade secrets or financial or commerical operations or information concerning the financial condition of a cooperative, whether for initial approval or continued approval, shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosures are necessary for the conduct of a price support program or such information is required to be disclosed by law.

§ 1425.6 Approved cooperatives.

(a) *Determination of approval.* CCC shall, in accordance with the provisions of this part, approve a cooperative marketing association to obtain price support.

(b) *Type of approval.* CCC may approve a cooperative to participate in a price support program with respect to the 1986 or subsequent crop of a commodity as:

(1) Unconditionally approved; or

(2) Conditionally approved. A cooperative may be conditionally approved if it has not met all of the requirements of this part but has substantially met all such requirements. Such a cooperative must agree in writing to meet all of the requirements for approval set forth in this part within the time period specified by CCC. Board resolutions in which the cooperative agrees to comply with provisions of this part may be accepted by CCC as substantial compliance with the requirements for approval for purposes of this section.

(c) *Term of approval.* A cooperative is approved to participate in a price support program for an authorized commodity until such time as the cooperative's approval is suspended or terminated by CCC.

§ 1425.7 Suspension and termination of approval.

(a) *Suspension.* A cooperative may be suspended by CCC from further participation in a price support program if it is determined that the cooperative has not operated in accordance with representations made in the cooperative's application for approval, has not complied with applicable regulations, or has failed to correct deficiencies noted during an administrative review or an audit of the cooperative's operations with respect to a price support program. Such suspension may be lifted upon the receipt of documents indicating that the cooperative has complied with all of the requirements for approval. If such documents are not received within one year from the date of the suspension, the cooperative's approval for participation in a price support program shall be terminated.

(b) *Termination.* (1) CCC may terminate the approval of the cooperative marketing association's ability to pledge commodities as collateral for CCC price support loans by giving the cooperative written notice of such termination. Ten days after the termination date, or at anytime thereafter, CCC may on demand call all outstanding CCC price support loans made to the cooperative. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

(2) An approved cooperative may at any time, upon written notice to CCC, voluntarily terminate the cooperative's approval to participate in a price support program, provided, that the cooperative does not have any outstanding price support loans at the time of voluntary termination.

§ 1425.8 Ownership and control.

(a) *Active members.* All approved cooperatives must be owned and controlled by active members of the cooperative.

(b) *Allocated equity.* The cooperative must establish that its active members own equity in the cooperative in an amount constituting more than 50 percent of the allocated equity of the cooperative. Such ownership equity shall be in the form of stock, revolving

fund certificates, capital retains, book credits, or other capital interests issued by the cooperative. In determining the requisite equity held by active members, the following shall be deducted from the amount of equity allocated to such active members:

(1) The allocated equity held by any active member who owns more than 10 percent of the cooperative's total equity; and

(2) The allocated equity of any active member that has acquired equity as a result of a loan from the cooperative unless such member is obligated to repay the loan within a reasonable period of time.

(c) *Active members.* The organization and operation of the cooperative shall be under the control of its active members. A cooperative shall be considered to be under the control of its active members if more than 50 percent of its membership consists of active members.

(d) *Directors.* (1) All directors must be: (i) Active members of the cooperative; (ii) representatives of such active members who are also employed as a farm manager or its equivalent (including an officer of a corporation and a partner in partnership); or (iii) officers, employees, or active members of an active member cooperative.

(2) A director shall be nominated and elected by members except when selected to fill the unexpired term of a director so elected.

(e) *Approved plan.* An applicant or an approved cooperative not under the ownership or control, or both, of its active members, may be approved by CCC to participate in a price support program if the cooperative is able to establish that, by retiring the equity of its inactive members or by obtaining new members, the cooperative can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Charter and bylaw provisions.

The articles of incorporation, articles of association, or the bylaws of the cooperative shall provide for each of the following requirements:

(a) *Annual meeting.* The cooperative shall hold an annual meeting of members or delegates at one or more locations within its operating area which will afford a reasonable opportunity for all members or their delegates to attend and participate.

(b) *Notice of meeting.* The cooperative shall give written notice to each member or delegate, of the time, place, and purpose of all regular and special meetings of members or delegates.

(c) *Open membership.* The cooperative shall admit to membership every applicant who: (1) Applies for admission for the purpose of participating in the activities of the cooperative, and (2) is eligible for membership under the statute incorporating the cooperative. The cooperative may, however, refuse membership to an applicant if the cooperative bases the refusal on reasonable grounds that the applicant's admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the cooperative.

(d) *Nominations.* (1) Nominations for election of delegates and directors shall be made by members.

(2) Nominations for officers shall be made by elected directors.

(3) Nominations may be made by balloting, nominating committee, petition of members, or from the floor, provided that nominations from the floor shall be requested in addition to nominations made by a nominating committee or by petition.

(e) *Balloting.* The election of directors, delegates, and officers shall be by balloting when there are two or more nominees for a position to be filled, or there are more nominees than there are positions to be filled.

(f) *Voting rights.* Each member of the cooperative shall have a single vote regardless of the number of shares of stock owned or controlled by such member except that CCC may approve another voting method which will adequately protect the ownership and control interests of the members of the cooperative.

(g) *Proxy or power of attorney.* (1) Except as provided in paragraph (g)(2) of this section, voting by proxy or under a power of attorney shall not be permitted.

(2) Voting by proxy or under power of attorney may be permitted if a cooperative: (i) Determines that it is necessary to amend the cooperative's articles of incorporation, articles of association, or bylaws, and (ii) establishes to the satisfaction of CCC that the law of the State in which the cooperative is incorporated permits voting by proxy or power of attorney, but does not permit members to vote by mail, with respect to such issue.

(h) *Financial statement.* Annually, each member of the cooperative shall be given a summary financial statement of the cooperative which is based on an annual audit conducted by a certified public accountant of the recordkeeping books and accounts of the cooperative.

§1425.10 Financial condition.

(a) *Financial ability.* An approved cooperative must be financially able to make financial advances to its members and to market commodities of such members.

(b) *Factors to consider.* The factors which will be considered in determining the financial condition of a cooperative include the following:

(1) The ability of the cooperative to meet current obligations, including the expenses of marketing the commodities on behalf of its members;

(2) The ability of the cooperative to make advance payments to its members, either from its own funds or through arrangements with financial or other institutions; and

(3)(i) The net worth of the cooperative. The cooperative shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in Table 1) multiplied by the total number of units of such commodity handled by the cooperative during the preceding marketing year, or, if the cooperative is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year. If a cooperative has not been approved to participate in a price support program for each of the three crop years immediately preceding the crop year for which approval is being considered, CCC may establish the unit total of a commodity to be used in determining the sufficiency of the cooperative's net worth.

(ii) If the amount of the net worth of the cooperative is less than 34 percent of the amount computed (as shown in Table 1) and the cooperative is determined by CCC to be otherwise financially sound, CCC may determine that the operation of the cooperative is being carried out in a financially sound basis. Such a determination by CCC may be made if (A) the board of directors of the cooperative agrees to make a capital retain in the amount set forth in Table 2 with respect to each unit of the commodity delivered to the cooperative until the net worth of the cooperative is at least equal to the amount per unit set forth in Table 1, and (B) the cooperative agrees to deduct the full amount of the estimated expenses of handling the commodities received by the cooperative. The failure to carry out such an agreement shall be grounds for terminating a cooperative's approval.

TABLE 1

Commodity	Unit	Amount per unit
Barley	Bushel	$0.13
Corn	Bushel	.13
Cotton	Bale	6.40
Honey	Hundredweight	1.90
Oats	Bushel	.13
Rice	Hundredweight	.52
Rye	Bushel	.13
Seed Cotton (lint basis)	Pounds	.008
Sorghum	Hundredweight	.19
Soybeans	Bushel	.43
Wheat	Bushel	.15

TABLE 2

Commodity	Unit	Amount per unit
Barley	Bushel	$0.07
Corn	Bushel	.07
Cotton	Bale	3.20
Honey	Hundredweight	.95
Oats	Bushel	.07
Rice	Hundredweight	.26
Rye	Bushel	.07
Seed Cotton (lint basis)	Pounds	.004
Sorghum	Hundredweight	.10
Soybeans	Bushel	.22
Wheat	Bushel	.08

(c) For the purposes of paragraph (b) of this section, the net worth of the cooperative shall be reduced by the value of the amount of any assets or funds which are not reflected as a liability of the cooperative in the financial statement of the cooperative and which are: (1) Pledged as security, deposited, or otherwise used to secure or guarantee any indebtedness of the cooperative, or (2) deposited in a restricted account or otherwise used to guarantee the performance of an obligation of the cooperative.

§ 1425.11 Operations.

(a) A cooperative shall establish to the satisfaction of CCC, with respect to the commodity for which approval is requested, that the cooperative is so organized and staffed by individuals employed directly by the cooperative that it is able to perform contracts with its members and to provide an effective marketing operation for its members.

(b) If a cooperative cannot satisfactorily establish that it can provide an effective marketing operation for its members, the cooperative may enter into a marketing agreement with another cooperative marketing association to market the commodity only if:

(1) Such marketing agreement is permitted by law;

(2) The articles of incorporation, articles of association, or bylaws of the cooperative acquiring the marketing service and the marketing agreement such cooperative has entered into with its members provides the necessary authority to enter into such agreement;

(3) The cooperative acquiring the marketing service is a member of the cooperative which will provide the marketing service; and

(4) The cooperative which will provide the marketing service has been approved under this part to obtain price support for such commodity.

(c) Any marketing agreement entered into by a cooperative, as provided in paragraph (b) of this section, must, as determined by CCC: (1) Adequately protect the ownership of the members of the cooperative's interests; (2) be in the best interest of the members of the cooperative acquiring the service; and (3) require that all proceeds from the marketing operation be distributed as provided in § 1425.17.

§ 1425.12 Conflict of interest.

(a) *Transactions detrimental to members.* The cooperative shall not be approved for participation in price support programs unless CCC determines that the cooperative's transactions, if any, which are of a kind described in this section have not operated and will not operate to the detriment of members of the cooperative.

(b) *Cooperative transactions.* The cooperative shall submit with the initial application for approval, and with each recertification, a detailed report concerning all of the transactions (including transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities) of the cooperative with the following persons which differ from transactions entered into by the cooperative with its general membership:

(1) Any director, officer, or principal employee of the cooperative, or any of their close relatives;

(2) Any partnership from which any person is entitled to receive a percentage of the gross profits;

(3) Any corporation in which any person owns stock;

(4) Any business entity from which any person receives fees for transacting business with or on behalf of the cooperative; or

(5) Any business entity in which an agent, director, officer or employee of the cooperative was an agent, director, officer or employee of such business entity.

(c) *Contemplated transactions.* The cooperative shall also submit a statement as to whether any transactions of the kind described in paragaph (b) of this section are contemplated between the date of the application, or the date such information is requested to be submitted in accordance with § 1425.4, as applicable, and the end of the next marketing year for the authorized commodity. If any transactions are contemplated, the cooperative shall submit a detailed explanation of such contemplated transaction and a statement of the reasons for such transactions.

(d) *Directors, officers, and employees.* The cooperative shall furnish information, as requested, showing the interest or relationship of its directors, officers, and principal employees and their close relatives with persons who engage in any business relating to a commodity for which the cooperative is approved to obtain price support. Such information shall be revised to reflect any change in any such interest or relationship.

§ 1425.13 Uniform marketing agreement.

(a) The cooperative must enter into a uniform marketing agreement with each member who delivers a commodity to an eligible pool for which price support is obtained on any quantity of the commodity in such pool.

(b) A cooperative may provide alternative methods of marketing commodities to its members, in addition to the methods set forth in its marketing agreement, if the terms and conditions thereof are reasonable to its members, and information concerning the use of such methods of marketing are made available to all members.

(c) An approved cooperative, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for not to exceed two crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method the cooperative, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the cooperative's membership publication or included in other written notice mailed to members.

§ 1425.14 Member business.

At least 80 percent of a crop of a commodity that is acquired by, or delivered to, the cooperative for marketing must be produced by its members in order for the cooperative to obtain price support for such crop. CCC may, for a period not to exceed two years, waive such requirement for a cooperative if:

(a) The quantity of such crop acquired by the cooperative for marketing from its members has a value greater than the value of the quantity acquired or

received from nonmembers for marketing;

(b) The cooperative can establish to the satisfaction of CCC that such authorization is necessary for the efficient operation of the cooperative; and

(c) The cooperative has a plan approved by CCC which will bring the cooperative into compliance with the provisions of this section. Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.

An approved cooperative shall have the authority to pledge as collateral for a price support loan the commodity delivered to it by its members, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the cooperative.

§ 1425.16 Eligible commodity and pooling.

(a) *Pools.* (1) A cooperative may establish separate pools as needed for quantities of a commodity.

(2) Price support will be available to the cooperative with respect to a quantity of an eligible commodity included in an eligible pool as provided in paragraph (c) of this section.

(b) *Eligible pool.* (1) A pool shall be eligible for price support if: (i) Except as provided in paragraph (b)(2) of this section, all of the commodity included in the pool is eligible for price support; (ii) the eligible commodity in such pool was (A) delivered to the cooperative for marketing for the benefit of the members of the cooperative and (B) delivered by members who retain the right to share in the proceeds from the marketing of the commodity in accordance with § 1425.17; and (iii) all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the cooperative with respect to such commodity in accordance with § 1425.17(a).

(2) A quantity of a commodity in a pool which is ineligible for price support because of grade or quality, or, in the case of cotton because of bale weight or repacking, shall not make the pool ineligible for price support.

(c) *Availability of price support.* (1) Price support will be available to the cooperative for the quantity of a commodity stored commingled equal to the smaller of: (i) The quantity of an eligible commodity received from members of the cooperative, or (ii) the quantity of commodity which is in the cooperative's inventory. The cooperative must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of each class and grade pledged as loan collateral.

(2) Price support will be available as provided in § 1421.3(g) for farm-stored commodities that have been delivered to the cooperative.

(3) Price support will be available to the cooperative for the eligible commodity stored identity preserved in an approved warehouse which was received from members of the cooperative and which is in the cooperative's inventory at the time such commodity is pledged as collateral for a price support loan or is offered to CCC for purchase.

(4) Eligibility of commingled commodities for price support may be transferred from a warehouse to an approved warehouse.

(d) *Allocation of costs and expenses.* If price support is obtained with respect to any quantity of a crop of a commodity which has been pooled, allocations by the cooperative of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(e) *Losses.* (1) Any losses incurred by the cooperative in the marketing of a crop of a commodity for which price support has not been obtained shall not be assessed against the proceeds from the marketing of a crop of a commodity included in a pool for which price support was obtained.

(2) Except as provided in paragraph (e)(3) of this section, losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained may not be carried forward and applied against subsequent crops of commodities included in a pool for which price support is obtained.

(3) (i) CCC may authorize an approved cooperative to carry forward losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the price support program.

(ii) The authorization referred to in paragraph (e)(3)(i) of this section will be approved on the basis of a plan, subject to the approval of CCC, for the carrying forward of losses submitted by an approved cooperative and will be continued on the condition that the approved cooperative remains in substantial compliance with the approved plan, as reflected in periodic progress reports.

(A) Factors which will be considered in determining whether to approve such a plan include, but are not limited to, the following: (*1*) The stability of the membership and participation between affected pools; (*2*) the financial condition of the cooperative; and (*3*) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period.

(B) The plan submitted by the cooperative must include the following: (*1*) A provision for notifying existing and new members of the cooperative of the plan to deduct eligible pool losses from subsequent eligible pool gains; and (*2*) a procedure for maintaining necessary data and records needed to generate periodic progress reports as directed by CCC.

(iii) Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan which has been approved by CCC under the criteria specified in paragraph (e)(3) of this section.

§ 1425.17 Distribution of proceeds.

(a) *CCC loans and purchases.* (1) If CCC makes available price support loans or purchases with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or purchases shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in the pool less any authorized charges for services performed or paid by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for price support. Such proceeds shall be distributed within 15 days from the date the cooperative receives the proceeds from CCC.

(2) Any advances made prior to pledging a commodity as security for a CCC loan or, prior to entering into a purchase agreement with CCC by the cooperative to its members who have commodity in the eligible pool may be credited by the cooperative against the distribution required in paragraph (a)(1) in this section.

(b) *Pool proceeds.* (1) If price support is obtained from CCC for any quantity

of the eligible commodity in a pool, all proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in such pool.

(2) Except as provided in paragraph (b)(3) of this section, all proceeds from an eligible pool for which price support has been obtained shall not be combined with proceeds from ineligible pools for distribution and final settlement, and the method of distribution of proceeds shall be as specified in the information provided to CCC in accordance with § 1425.4(b)(7).

(3) Sales proceeds from an eligible pool may be combined with sales proceeds from ineligible pools or other eligible pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in such pools.

(4) Pool proceeds obtained by means of price supports from CCC shall not be combined with proceeds from other eligible or ineligible pools.

(c) *Unclaimed funds.* If a cooperative has attempted to distribute to its members a part of its equity, as defined in § 1425.8, in accordance with the articles of incorporation, articles of association or the bylaws of the cooperative and has given notice of distribution both by publication and personal letter addressed to such members, the cooperative may provide, to the extent permitted by the law of the State applicable to such distribution, for reallocation of such undistributed equity to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run, such period to begin on the date the equity to be distributed was declared to be payable by the cooperative;

(2) The cooperative, 30 days prior to the lapse of the period of limitation specified in paragraph (c)(1) of this section, has given the affected member notice (by certified mail, return receipts requested, at the member's last known address as reflected on the books of the cooperative) of the amount of equity payable to such member(s) and notice that such equity may be distributed to other members and patrons if the affected member does not make a claim for such equity within the period of limitation specified in paragraph (c)(1) of this section; and

(3) No claim for payment of the equity to be distributed has been made within the period of limitation described in paragraph (c)(1) of this section.

§ 1425.18 Member cooperatives.

(a) *Obtaining price support.* Except as provided in paragraph (c) of this section, in order for a cooperative to obtain price support for any quantity of an eligible commodity delivered by a member cooperative or for a cooperative to obtain price support for any quantity of an eligible commodity included in the same pool with the commodity delivered by a member cooperative, the cooperative and such member cooperative must meet the requirements of this paragraph.

(1) The eligible commodity delivered by the member cooperative must be produced by the members of such member cooperative.

(2) The member cooperative must be authorized to: (i) Sell the commodity; (ii) pledge such commodity as collateral for a price support loan; (iii) place a lien on such commodity; and (iv) deliver such commodity to the cooperative for marketing.

(3) The cooperative must either: (i) In its articles of incorporation, articles of association, bylaws, or marketing agreement, require each such member cooperative to meet the requirements of this part; or (ii) determine and certify annually to CCC that each such member cooperative meets the requirements of this part.

(b) *State law.* The cooperative shall determine and certify annually to CCC that its member cooperatives which are not subject to paragraph (a) of this section are in compliance with the producer ownership, membership meeting, and voting requirements of applicable State law.

(c) *Exemption.* An approved cooperative is required to meet only the provisions contained in paragraphs (a)(1) and (2) of this section with respect to a member cooperative for whom the member cooperative markets the production of the members cooperative's members in accordance with § 1425.11(b).

§ 1425.19 Nondiscrimination.

The cooperative shall not, on the ground of race, color, age, sex, religion, national origin, physical or mental handicap, deny any producer from participation in, or otherwise subject any producer to discrimination with respect to any benefits resulting from its approval to obtain price support and shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the Secretary's regulations issued thereunder, appearing in §§ 15.1–15.12 of this Title, and any amendments thereto; section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978; and provisions of the Age Discrimination Act of 1975 as amended. The cooperative shall not discriminate against employees under Title VII of the Civil Rights Act of 1964, as amended, or the Equal Pay Act of 1963 or Title VI of the Civil Rights Act of 1964 as administered by the Equal Employment Opportunity Commission, and to handle employee discrimination complaints as provided for in 28 CFR Part 42 and 29 CFR Part 1691. The United States shall have the right to enforce compliance with such statutes and regulations by suit or by any other action authorized by law. The cooperatives shall submit a certification with its application that the above cited regulations and rules have been read and understood and that the cooperative will abide by them.

§ 1425.20 Records required.

(a) *Acquisitions.* An approved cooperative and its member cooperatives shall maintain a record which shows the quantity of commodity which is received from each of its members and nonmembers, the date received, the eligibility status for price support of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable quality factor applies.

(b) *Dispositions.* The cooperative shall maintain a record which shows each quantity of commodity which is disposed of; and, if sold, the date sold and the price received; and the date removed for processing or shipped. Except as provided in paragraph (c) of this section, inventory shall be allocated in the following manner until the entire inventory in a particular pool is depleted:

(1) *Commodities which are processed.* The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted at the time the commodity is withdrawn from inventory for processing.

(2) *Commodities not processed.* The quantity of a commodity to be shipped shall be allocated to an eligible pool, an ineligible pool, or a combination of eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

(c) Records of eligible and ineligible pool dispositions need not be maintained separately so long as sales proceeds from such pools are allocated among the pools according to the

quantity and quality of commodity included.

§ 1425.21 Inspection and investigation.

(a) *Retention of records.* The books, documents, papers, and records of the approved cooperative, member cooperatives, and subsidiaries, shall be maintained for a period of five years and shall be made available to CCC for inspection and examination at all reasonable times.

(b) *Examination.* CCC shall have the right at any time after an application is received, to examine all books, documents, papers, and records of the approved cooperative, member cooperatives, and subsidiaries, and to make such investigations as are deemed necessary to determine whether the cooperative is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles of association, bylaws, and agreements with producers, the representations made by the cooperative in its application for appproval, and, where applicable, its agreements with CCC.

§ 1425.22 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560–0040.

§ 1425.23 Appeals.

A cooperative may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at Part 780 of this title.

PART 1427—[AMENDED]

6. Part 1427 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended to read as follows:

A. The authority citation for Part 1427 is revised to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 401 and 403 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1054, as amended (7 U.S.C. 1444, 1421, and 1423); sec. 501 of Pub. L. 99–198.

B. The table of contents to Subpart—Cotton Loan Program Regulations is amended by adding § 1427.26 as follows:

* * * * *

§ 1427.26 Recourse loans.

* * * * *

C. Section 1427.8 is amended by adding paragraphs (e) and (f) to read as follows:

§ 1427.8 Weight, loan rate, and amount of loans.

* * * * *

(e) *Plan A and Plan B.* (1) If CCC determines that the prevailing world market price for upland cotton, adjusted to United States quality and location, is less than the loan level established with respect to a crop of upland cotton, CCC shall implement the provisions of paragraphs (e)(2) or (e)(3) of this section.

(2) *Plan A.* CCC may announce a loan repayment level with respect to a crop of upland cotton at not less than 80 percent of the loan level established for such crop. The loan level and the loan repayment level shall be announced concurrently.

(3) *Plan B.* (i) If CCC does not elect to implement Plan A as specified in paragraph (e)(2) of this section, CCC shall, except as provided in paragraph (e)(3)(B) of this section, permit producers to repay a loan at a level that is the lesser of (A) the loan level established for such crop, or (B) the prevailing world market price for upland cotton, as determined by CCC.

(ii) With respect to the 1987 through 1990 crops of upland cotton, if the world market price for upland cotton, as determined by CCC, is less than 80 percent of the loan level established for such crop, CCC may permit a producer to repay a loan at a level, which is not in excess of 80 percent of such loan level.

(f) *Payment to first handlers of cotton.* (1) If CCC determines during the period August 1, 1986, through July 31, 1991, that either program implemented in accordance with paragraph (e) of this section: (i) Fails to make United States upland cotton fully competitive in world markets; and (ii) the prevailing world market price for upland cotton, as determined by CCC, is less than the current loan repayment rate for upland cotton, CCC shall issue to first handlers of cotton, subject to such terms and conditions as CCC may prescribe, commodity certificates in accordance with Part 770 of this title.

(2) For purposes of this paragraph, a first handler of cotton is a person regularly engaged in the buying or selling of upland cotton who has entered into an agreement with CCC participate in the program set forth in this section.

(3) The value of commodity certificates issued in accordance with this section shall be based upon the difference between: (i) The current loan repayment level for upland cotton and (ii) The prevailing world market price for upland cotton, as determined by CCC.

(g) *August 1, 1986 upland cotton inventory payments.* CCC may issue commodity certificates to persons with raw upland cotton in inventory on August 1, 1986, in such amounts as CCC determines necesary, to make such cotton in inventory available on the same basis as 1986 crop cotton.

D. Section 1427.22 is amended by revising and redesignating paragraph (a) as (a)(1) and adding paragraph (a)(2) to read as follows:

§ 1427.22 Repayment of loans.

(a)(1) If a producer desires to redeem one or more bales of cotton pledged to CCC as security for a loan, the producer may receive the warehouse receipts (and the classification memoranda applicable to such cotton, if requested) upon payment of the loan, interest, and charges applicable to the bales of cotton being redeemed at the local county ASCS office except that an authorized agent under agreement with CCC and designated by producers to repay loans on their behalf may repay loans through a central county ASCS office designated by CCC. The producer may also request that the warehouse receipts (and classification memoranda) be forwarded to a bank for payment, in which case the amount of the loan, interest, and charges must be paid to the bank within 5 business days after the documents are received by the bank. Repayments will not be accepted after CCC acquires the cotton. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(2) Notwithstanding the method of loan repayments authorized in paragraph (a)(1) of this section, CCC may allow producers to redeem one or more bales of cotton pledged as collateral for a loan by paying of CCC an amount less than the principal amount of the loan and charges as may be set forth under the terms and conditions specified by CCC at the time

the producer redeems the commodity pledged as collateral for such loan.

* * * * *

E. A new § 147.26 is added to Subpart—Cotton Loan Program Regulations to read as follows:

§ 1427.26 Recourse loan.

The Secretary may make recourse loans available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

Signed at Washington, DC on March 5, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation and Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86-5231 Filed 3-6-86; 12:43 pm]

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federal register

Tuesday
March 11, 1986

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784

Protecting Historic Properties From Surface Coal Mining Operations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784

Protecting Historic Properties From Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its rules with respect to the consideration of cultural and historic properties to clarify existing provisions in its regulatory program. Provisions addressing the definition of cemetery, collection of information on known historic properties by applicants for permits to conduct coal mining operations, consideration of historic properties by State regulatory authorities, collection of environmental information by applicants for permits to conduct coal mining operations, and preparation of reclamation plans by applicants for permits to conduct coal mining operations are being proposed. These rules are being proposed (1) in response to a decision by the U.S. District Court for the District of Columbia, (2) in order to facilitate the implementation of OSMRE's responsibilities under the National Historic Preservation Act of 1966, as amended (NHPA), and (3) to respond to a petition for rulemaking filed with OSMRE by the Society of Professional Archeologists (SOPA). The proposed rules would clarify the responsibilities of the OSMRE, State regulatory authorities, and applicants for permits to conduct coal mining and exploration operations to ensure appropriate consideration of important historic properties.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rule until 5:00 p.m. eastern time on June 9, 1986.

Public hearings: Upon request, OSMRE will hold public hearings on the proposed rule at 9:30 a.m. local time in Washington, DC, on May 13, 1986; in Denver, Colorado on May 20, 1986; and Knoxville, Tennessee on May 27, 1986. Upon request, OSMRE will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. eastern time on April 22, 1986.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining, Reclamation and Enforcement, Administrative Record, Room 5124B, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining, Reclamation and Enforcement, Administrative Record, Room 5124B–L, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Street, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in other locations will be announced prior to the hearings.

Requests for public hearings: Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT"** by the time specified under **"DATES."**

FOR FURTHER INFORMATION CONTACT: Dr. Annetta L. Cheek, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; telephone: 202–343–7951.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed revisions should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, dates, and addresses scheduled for hearings at Washington, DC, Denver, CO, and Knoxville, TN, are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The time, dates, and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Annetta L. Clark (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on April 22, 1986. If no one has contacted Dr. Cheek to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE to prepare responses to clarify issues, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

Consideration of historic properties is required by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), as well as by other Federal statutes. Historic properties are addressed in sections 507(b)(13), 522(a)(3)(B) and 522(e)(3) of the Act. Additional requirements applicable to OSMRE's programs are found in sections 106 and 110 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

Section 507(b)(13) of the Act requires applicants for permits to conduct coal mining operations to include in their applications accurate maps showing all manmade features and significant known archeological sites existing on the date of application.

Section 522(a)(3)(B) of the Act authorizes regulatory authorities to determine that a surface area is unsuitable for all or certain types of coal mining if it would affect fragile or historic lands on which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems.

Section 522(e) of the Act lists several property types on which mining is prohibited. Specifically, this section states that no surface coal mining operations will be permitted "within one hundred feet of a cemetery" or "which will adversely affect any publicly owned park or places included in the National Register of Historic Sites (sic) unless

approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site." Exceptions exist for valid existing rights and operations existing on August 3, 1977.

Section 106 of the National Historic Preservation Act, as amended, requires Federal agency heads, prior to authorizing expenditure of Federal funds on a Federal or federally assisted undertaking, or prior to issuing a Federal license for such an undertaking, to consider the effect of the undertaking on historic resources and to provide the Advisory Council on Historic Preservation (Advisory Council) with a reasonable opportunity to comment on the undertaking. Under the NHPA, OSMRE reviews State program provisions as well as its own operations to ensure that appropriate consideration is being given to important historic properties.

The revisions to the existing regulations proposed here respond to three basic concerns. First, opinions issued by the District Court of the District of Columbia require certain changes to the existing language. Second, the petition for rulemaking on this issue, submitted by SOPA, was determined to have merit and OSMRE has decided to propose regulations to respond to the issues raised in that petition. See the discussion of the Director's decision on this petition at 51 FR 3802, January 30, 1986, which is part of the basis and purpose for this rule. Third, OSMRE's experience with the process as it now operates, and comments from various interest groups, both suggest that greater clarity and specificity in the regulations is required so that the regulatory authorities can better assist the Secretary of the Interior (the Secretary) in implementing his responsibilities concerning historic resources.

Existing Regulatory Program

Provisions for consideration of historic properties were promulgated by OSMRE as part of the permanent regulatory program for surface coal mining reclamation operations on March 13, 1979 [44 FR 15324 *et seq.*] and on September 14, 1983 [48 FR 41348 *et seq.*]. Subsequent amendments to relevant sections of the individual parts which deal with historic properties were promulgated on the following dates: 30 CFR Part 731—June 17, 1982 (47 FR 26364), and January 18, 1983 (48 FR 2272); 30 CFR Part 732—January 23, 1981 (46 FR 7907), and June 17, 1982 (47 FR 26366 and 26367); 30 CFR Part 772—September 8, 1983 (48 FR 40634); 30 CFR Part 773—September 28, 1983 (48 FR 44391); and 30 CFR Part 779—August 24, 1979 (44 FR 49685), August 4, 1980 (45 FR 51550), April 5, 1983 (48 FR 14822), and September 14, 1983 (48 FR 41356). Taken together, these regulations establish certain procedures which affect the consideration of historic properties.

1. Applicants for a permit must identify eligible and listed properties based on all available information. §§ 779.12(b) and 779.24(i)]

The regulations further specify that available information includes, but is not limited to, data of State and local preservation agencies.

2. The State Historic Preservation Officer (SHPO) is notified of all permit applications, and given an opportunity to comment. [§§ 773.13(a)(3)(ii) and (b)]

3. The public is also notified in a local newspaper of the complete permit application and given an opportunity to comment. [§ 773.13]

4. Any person having an interest that may be adversely affected may request an informal conference to submit information to the regulatory authority. [§ 773.13(c)]

5. The regulatory authority, based on such comments, records of any informal conferences, and on the information in the application, may require modification of the permit application. [§ 773.15]

This modification could include a requirement to obtain additional information and conduct new analyses to determine whether historic properties eligible for inclusion in the National Register of Historic Places are present in a proposed permit area.

Although not mandatory, the use of a field survey or background research could be required by the regulatory authority at this time.

6. Regulatory authorities should be able to demonstrate through the record of their decision that they have given consideration to a State Historic Preservation Officer's well reasoned comments. [§ 773.15]

7. The regulatory authority has the authority to require the operator to conduct appropriate mitigation measures to preserve important historic resources. Such measures could include a variety of activities from photographic recordation through archeological data recovery. [§ 773.15]

8. Procedures are available for the administrative and judicial review of decisions on permits. [Part 775]

In the last year, OSMRE has directed substantial resources to interpreting the regulatory program to provide clearer guidance on appropriate consideration of important historic resources. OSMRE's historic preservation requirements were set forth in several letters to SHPO's and the State regulatory authorities. In these letters, OSMRE sets forth the following basic concepts:

1. In accepting financial assistance for its program from OSMRE, a State regulatory authority assures the Secretary that it will assist him in his compliance with section 106 of the NHPA by consulting with the State Historic Preservation Officer on the identification of properties listed on or eligible for listing on the National Register of Historic Places and by complying with his requirements to avoid or mitigate adverse impacts upon such properties. (This assurance is required to be included in every Federal grant by the Office of Management and Budget Circular A–102, Attachment M.)

2. State programs must contain provisions no less effective than the permanent program regulations.

3. OSMRE requires through the national regulations that individual permit decisions by the State regulatory authority take into account comments or recommendations from the State Historic Preservation Officer concerning the effect of the decision on historic properties.

4. The national regulatory program provides the basis and authority for State programs to assure that appropriate consideration is given to historic properties.

District Court Decisions

Provisions for the consideration of historic properties promulgated as part of OSMRE's permanent program rulemaking of March, 1979, at Part 761 provided protection under section 522 of the Act for historic properties both actually listed on the National Register of Historic Places, and properties eligible to be listed on the National Register of Historic Places. These provisions of the permanent program regulations were challenged in the U.S. District Court for the District of Columbia. In an order issued in December, 1979, *(In re: Permanent Surface Mining Regulation Litigation,* C.A. No. 79–1144 (Order filed December 21, 1979. pg. 2)), the Court suspended language in OSMRE's regulations which extended protection to properties eligible for listing. In the same order, the Court suspended the language in the regulations which provided protection for privately owned places listed on the National Register of Historic Places. Consequently, OSMRE revised these regulations to limit the protections of section 522(e)(3) of the Act to publicly

owned properties listed on the National Register of Historic Places.

In an opinion resolving a subsequent challenge by the Society of Professional Archaeologists, other environmental groups, and industry to these same regulatory provisions, the District Court found *(In Re: Permanent Surface Mining Regulation Litigation II,* No. 79–1144 (D.D.C. 1985), Mem. Op. filed July 15, 1985, pg. 77 *et seq.*)) that OSMRE had properly excluded properties eligible for listing on the National Register of Historic Places from the protections offered by section 522(e)(3) of the Act. However, the Court also determined that the exclusion of privately owned properties listed on the National Register of Historic Places from the protections offered by this same section was improper, and that the Congress intended to protect both privately owned and publicly owned places on the National Register of Historic Places. The provisions being proposed here would respond in part to these determinations of the District Court. (Part 761)

Citizen and environmental plantiffs in *In Re: Permanent II* also challenged OSMRE's definition of "cemetery" found in 30 CFR 761.5. Section 522(e)(5) of the Act prohibits surface coal mining operations "within one hundred feet of a cemetery." Regulations of March, 1979 defined a cemetery as "any area of land where human bodies are interred." However, subsequent revisions to these provisions in September, 1983, defined "cemetery" to be "any area of land where human bodies are interred, except private family burial plots" (48 FR 41348 of Sept. 14, 1983). This revision was in response to the type of situation that arose in *Holmes Limestone Co.* v. *Andrus,* 655 F. 2d 732 (6th Cir. 1981), *cert. denied,* 456 U.S. 995 (1982), in which the owners of a private burial plot wanted to permit mining closer to the plot than the regulations would provide. The court concluded in the opinion of July 15, 1985, cited above, that the definition in the 1983 regulations is inconsistent with the Act. Consequently, the Court remanded the definition of cemetery included in 30 CFR 761.5. The currently proposed regulations would respond in part to this order by eliminating the exclusion for "private family burial grounds" from the definition of cemetery and, with one minor exception, reinstating the original definition from the 1979 regulations. (Parts 761, 773, 779)

Petition for Rulemaking

The Society of Professional Archaeologists (SOPA) filed a petition for rulemaking with OSMRE on September 15, 1983. On August 23, 1985 (50 FR 34167), OSMRE published a notice requesting public comment on the rulemaking petition. The petition asserted that because of the absence of guidance in the regulatory program, State regulatory authorities are implementing historic preservation provisions inconsistently. Subsequently, SOPA joined with the National Trust for Historic Preservation in the legal challenge before the District Court of the District of Columbia to regulations implementing section 522 of the Surface Mining Control and Reclamation Act promulgated during regulatory reform. This case is discussed above under *District Court Issues.*

The SOPA's principal concerns in the petition were that the existing regulations are silent as to

1. How properties eligible for but not yet listed on the National Register of Historic Places are to be identified by applicants, and
2. What a State RA is to do when mining will impact such properties.

On December 13, 1985, the Director of OSMRE determined that the petition represented valid concerns. This decision is discussed in more detail in FR (cite of future notice responding to SOPA). The currently proposed rulemaking is the rulemaking the Director of OSMRE committed to do in his response to SOPA's petition.

Clarification of Existing Regulatory Provisions

OSMRE has received a large number of inquiries from State regulatory authorities, State Historic Preservation Officers, the professional archeological and historic preservation community, and the coal mining industry concerning the historic preservation requirements in the program. Clarification of the responsibility and authority of the State regulatory authorities regarding historic properties has been sought by a number of correspondents. Additionally, information on the effect of the provisions of the National Historic Preservation Act on the State programs has been sought by the States, industry, and the preservation community. Consequently, OSMRE has determined that clarification of provisions for the protection of historic properties is necessary to ensure that an appropriate balance is achieved between the public's interest in historic properties and the need to mine coal. (Parts 731, 732, 773, 779, 780, 783, and 784.)

Residual Issues

In addition to the three major factors which the proposed revisions would address, discussed above, several revisions are being proposed to improve consistency within the regulations and to improve coordination with other relevant statutes. (Parts 773, 779)

III. Discussion of the Proposed Rules

30 CFR Part 731

Part 731 currently provides authority to the States to submit a program to OSMRE for review which, when approved, allows the State to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within its boundaries. It also establishes general content requirements for program submissions.

Two changes in the language of this part are being proposed, both within § 731.14. This section currently details the content requirements for program submissions. Section 731.14(g)(10) requires program submissions to include a narrative description or other appropriate document of the State's proposed system for consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values, and historic, cultural, and archeological resources. The proposed language would remove the reference to historic, cultural, and archeological resources from § 731.14(g)(10), and create a new § 731.14(g)(17), that would specifically address these resources. The new paragraph would include a provision that would require State program submissions to include a discussion of the State's proposed system for consulting with State and local agencies having responsibility for historic, cultural, and archeological resources, as well as the State's system for making decisions regarding such resources. This provision is included to clarify the procedures to be followed in a specific State for the consideration of historic properties and to provide the Secretary with additional information to assess the effect of State program approval on cultural and historic resources.

30 CFR Part 732

Part 732 details the procedures and criteria that OSMRE uses in approving or disapproving State program submissions. Criteria for approval or disapproval of State programs and State program amendments are set forth at 30 CFR 732.15. For approval, such criteria require that a State's laws and regulations are in accordance with the provisions of the Surface Mining Act and consistent with the requirements of 30 CFR Chapter VII. The phrases

"consistent with" and "in accordance with" are defined at 30 CFR 730.5 and mean:

(a) With regard to the Act, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act.

(b) With regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of the Act.

A new paragraph is being proposed at § 732.17(h)(4). The proposed change would clarify the requirement to coordinate review of State program amendments with the State Historic Preservation Officer, and would require that such amendments which have an impact on historic properties must also be submitted to the Advisory Council on Historic Preservation for comment. Comments by the SHPO, Advisory Council, or other interested persons are considered by OSMRE during review of State programs or State program amendments using the criteria of Part 732.

Under the proposal, the Advisory Council would be provided the same comment period the public is provided under paragraph (h)(3) of § 732.17. This section provides a minimum of 30 days for public comment for each proposed State program amendment, with certain exceptions when 15 days are allowed.

A 30 day review period is necessary in many instances because of the requirements placed on OSMRE by this part to process the large number of State program amendments in a timely manner. These proposed changes respond to the requirements placed on OSMRE by the National Historic Preservation Act of 1966, as amended.

30 CFR Part 761

This part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations established by Congress in section 522(e) of the Act for those types of operations on certain Federal, public, and private lands. Section 761.5 defines a series of terms used consistently throughout the regulations. Cemetery is defined as any area of land where human bodies are interred, except private family burial grounds. Section 761.11 discusses areas where mining is prohibited. The list of prohibited areas includes any lands where mining would adversely affect any publicly owned park or any publicly owned places included in the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place.

Proposed changes to § 761.5 would revise the definition of "cemetery" to include any area of land where human bodies are purposely interred, consistent with the order of the District Court discussed above. The word "purposely" has been included in the proposal to emphasize that only intentional interments are considered cemeteries. This would include private family burial grounds and other sites, such as the Indian burial mounds found throughout the Ohio River Valley.

Proposed changes to § 761.11(c) would revise the provisions concerning areas where mining is prohibited by Act of Congress. The proposed language would remove the restriction of the prohibition to publicly owned sites listed on the National Register of Historic Places and extend the same prohibition to privately owned listed sites, subject to valid existing rights. This proposed change is in response to the decision of the District Court, discussed above.

For the same reason, § 761.12(f) would also be revised to extend the procedures implementing the prohibition against mining to privately owned, as well as publicly owned, properties listed on the National Register of Historic Places.

30 CFR Part 772

This part establishes the requirements and procedures applicable to coal exploration operations. Specific consideration of historic properties is found in §§ 772.12(8) (i through iii). These paragraphs require that applications for permits for exploration removing more than 250 tons of coal must include a description of resources listed on the National Register of Historic Places, resources known to be eligible for listing on the National Register, and known archeological resources located within the proposed exploration area.

Proposed changes to § 772.12(a)(8) would clarify that the regulatory authority could require additional information regarding known or unknown historic resources needed to process permits for coal exploration.

30 CFR Part 773

This part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits, coordination with other laws, public participation, permit decisions and notification, permit conditions, and permit term and right of renewal. Specific consideration of historic properties is found in § 773.12, which lists other laws with which surface coal mining regulatory programs must be coordinated. These include the National Historic Preservation Act of 1966, as amended, Executive Order 11593 (subsequently codified as section 110 of the NHPA), and for Federal programs only, the Archeological and Historic Preservation Act of 1974. Section 773.15 discusses the review of permit applications. It specifies that the regulatory authority must make a written finding prior to permit application approval that surface coal mining and reclamation operations will not adversely affect a private family burial ground. However, relocation of a private family burial ground, if authorized by applicable State law or regulations, shall not constitute an adverse affect.

Proposed changes to § 773.12 would add the Archaeological Resources Protection Act (ARPA) to the existing list of Federal statutes with which the processing of permits for coal mining operations needs to be coordinated for Federal and Indian lands only. Any archeological excavation or removal of archeological materials from either Federal or Indian lands is governed by the provisions of ARPA. State and private lands are not covered by ARPA. ARPA requires a permit for such activities, issued by the land manager. Because OSMRE is responsible for environmental compliance activities prior to the issuance of permits to mine coal on Federal and Indian lands, coordination of processing of permits to conduct coal mining operations with the specific provisions of ARPA is needed to prevent delay and duplication of compliance activities.

Section 773.15(c)(11), which provides protecton for private family burial grounds, would become unnecessary when the definition of cemetery would be revised to include family burial grounds. Under the proposed definition of cemetery, protection for private family burial grounds would be covered by the permit finding at § 773.15(c)(3)(ii) and by the prohibition of § 761.11. These two sections extend the requirements of section 522(e)(5) of the Act to *all* cemeteries. The statement appearing in § 773.15(c)(11) that cemeteries could be relocated if authorized under applicable State law would remain but be moved to § 761.11(g).

In place of existing § 773.15(c)(11), a new paragraph, § 773.15(c)(11), would be added, requiring that the regulatory authority make a written finding that it has taken into account the effect of a proposed permitting action on properties listed on and eligible for listing on the

National Register of Historic Places. OSMRE intends that this be accomplished through a process similar to that listed above under the discussion of the *Existing Regulatory Program*, and under the clarifications enunciated in this proposal. In every case, the regulatory authority would be expected to evaluate concerns of the SHPO, if any, and take appropriate action.

30 CFR Parts 779 and 783

These two parts discuss minimum requirements for information on environmental resources for surface mining and underground mining permit applications, respectively. The two sections contain similar requirements and language for the two types of permits. Sections 779.12 and 783.12 discuss general environmental resources information which must be included in permit applications, including the nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas. The description is to be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies.

Section 779.24 discusses the general requirements for maps which must accompany permit applications, which include an indication of the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas, and each public or private cemetery, Indian burial ground, or other area where human bodies are interred, that is located on or within 100 feet of the proposed permit area.

Paragraph (b) of §§ 779.12 and 783.12 would be reformatted to place existing language in the introductory sentence and in paragraph (b)(1). A new paragraph (b)(2) would be added. A minor change is proposed for the existing language in §§ 779.12(b) and 783.12(b). A change in language from "archaeological features" to "archeological sites" in the discussion of environmental information required in permit applications would make the language in this section consistent with the Act and with the language in other sections of the regulations.

The new paragraphs would clarify that the regulatory authority can, when appropriate, require applicants to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places. This could be accomplished through (1) the collection of additional information, (2) the conduct of field investigations, or (3) other appropriate measures. Because field investigations could be costly, it would be expected that they would be required only where substantial likelihood of undiscovered resources exists.

The proposed revisions include a minor change to §§ 779.24(j) and 783.24(j). These changes would remove specific references to Indian burial grounds, private cemeteries, and other areas where human bodies are interred, which would make the language in these sections consistent with the proposed definition of "cemetery" in § 761.5, discussed above.

30 CFR Parts 780 and 784

These parts discuss minimum requirements for reclamation and operation plans to be included in surface mining and underground mining permit applications, respectively. Changes are proposed for §§ 780.31 and 784.17. The changes would include restructuring by placing the existing provision, as modified, in paragraph (a), and by adding a new paragraph (b).

Current language at §§ 780.31 and 784.17 states that, for any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in § 761.12(f). The existing sections are intended to implement the provisions of section 522(e)(3) of the Act, which states that, subject to valid existing rights (VER), no surface coal mining operations shall be permitted which will adversely affect any publicly owned park or places included in the National Register of Historic Sites (sic) unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park of the historic site (section 522(e)(3) of SMCRA). This statutory language does not provide for impacts to occur absent this joint approval, or unless VER exists.

OSMRE proposes to amend these sections of the rules to track the statutory requirements of section 522(e)(3) to prevent impacts and, if the prohibition is not applicable, to protect such parks or places using a minimization standard. Thus, each permit application would need to include a description of the measures to be used either (1) to prevent impacts to publicly owned parks or any places listed on the National Register of Historic Places, or (2) if VER exists or joint agency approval is to be obtained under § 761.12(f), to minimize impacts to such places. This revised language in §§ 780.31(a) and 784.17(a) would clarify that unless VER exists or joint approval is obtained, the statutory intent is avoidance, not minimization, of impacts.

The proposal would add a new paragraph (b) in §§ 780.31 and 784.17 to clarify the authority of the regulatory authority specifically to require operators to perform necessary mitigation and treatment activities for historic properties listed on or eligible for listing on the National Register of Historic Places prior to the commencement of any specific mining operations which would affect such properties. Paragraph (b) would not implement section 522(e)(3) of the Surface Mining Act, but would aid in enabling the States to assist the Secretary in fulfilling his responsibilities under section 106 of the National Historic Preservation Act. The proposed sections would allow regulatory authorities to require operators to perform the necessary activities either before or after permit issuance, so long as it occurs before the commencement of mining operations that would affect such properties.

Thus, proposed §§ 773.15(c)(11), 779.12(b), 780.31(b), 783.12(b) and 784.17(b) would clarify the State's authority and responsibility regarding historic properties.

V. Procedural Matters

Federal Paperwork Reduction Act

The proposed rule contains information collection requirements requiring clearance from the Office of Management and the Budget (OMB) under The Federal Paperwork Reduction Act. Approval to include these new requirements is being requested from OMB.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

The primary purpose of this proposal is clarification of authorities OSMRE believes State regulatory authorities already have. Thus, no substantial impact is expected.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial

number of small entities. The primary purpose of this proposal is clarification of authorities OSMRE believes State regulatory authorities already have. Thus, no substantial impact is expected.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) on the impacts on the human environment of this proposed rulemaking. This EA is on file in the OSMRE Administrative Record at the address listed in the **"ADDRESSES"** section of this preamble. An EA on the final rule will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

List of Subjects

30 CFR Part 731

Coal mining, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 732

Coal mining, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 761

Coal mining, Historic preservation, Monuments and memorials, National Forests, National Parks, Reporting and recordkeeping requirements, Surface mining, Underground mining, Wildlife refuges.

30 CFR Part 772

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 773

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

For the reasons set forth in this preamble it is proposed to amend 30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784 as set forth below.

Dated: February 14, 1986.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

PART 731—SUBMISSION OF STATE PROGRAMS

1. The authority citation for part 731 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

2. Section 731.14 is amended by revising paragraph (g)(10) and by adding a new paragraph (g)(17) to read as follows:

§ 731.14 Content requirements for program submissions.

* * * * *

(g) * * *

(10) Consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values.

* * * * *

(17) Consulting with State and local agencies having responsibility for historic, cultural, and archeological resources, and for making decisions regarding such resources.

* * * * *

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

3. The authority citation for part 732 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

4. Section 732.17 is amended by redesignating paragraphs (h)(4) through (h)(12) as paragraphs (h)(5) through (h)(13), respectively, and by adding a new paragraph at (h)(4) to read as follows:

§ 732.17 State program amendments.

* * * * *

(h) * * *

(4) All State program amendments shall be provided to the State Historic Preservation Officer for review no later than the beginning of the public comment period provided under paragraph (h)(3). All State program amendments which may have a significant impact on historic resources shall be submitted to the Advisory Council on Historic Preservation for the same comment period provided in paragraph (h)(3) of this section.

* * * * *

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

5. The authority citation for part 761 continues to read as follows:

Authority: Secs. 102, 201, 501(b), 503, 504, 510, 512, 513, 514, 522 and 701 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 480, 483, 484, 485, 507 and 518 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1262, 1263, 1264, 1272, and 1291).

6. Section 761.5 is amended by revising the definition of "cemetery" to read as follows:

§ 761.5 Definitions.

For the purposes of this part—

* * * * *

Cemetery means any area of land where human bodies are purposely interred.

* * * * *

7. Section 761.11 is amended by revising paragraphs (c) and (g) to read as follows:

§ 761.11 Areas where mining is prohibited or limited.

* * * * *

(c) On any lands where mining will adversely affect any publicly owned park or any places included in the National Register of Historic Places, unless jointly approved by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place;

* * * * *

(g) Within 100 feet, measured horizontally, of a cemetery; cemeteries may be relocated if authorized by applicable State law or regulations.

* * * * *

8. Section 761.12 is amended by revising paragraph (f)(1) to read as follows:

§ 761.12 Procedures.

* * * * *

(f)(1) Where the regulatory authority determines that the proposed surface coal mining operation would adversely affect any publicly owned park or any place included in the National Register of Historic Places, regulatory authority shall transmit to the Federal, State, or local agency with jurisdiction over the publicly owned park or any place listed on the National Register of Historic Places a copy of applicable parts of the permit application, together with a

request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The regulatory authority, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit.

* * * * *

PART 772—REQUIREMENTS FOR COAL EXPLORATION

9. The authority citation for part 772 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et. seq.*

10. Section 772.12 is amended by adding a new paragraph, (b)(8)(iv), to read as follows:

§ 772.12 Permit requirements for exploration more than 250 tons of coal.

* * * * *

(b) * * *

(8) * * *

(iv) Any other information which the regulatory authority may require regarding known or unknown historic resources.

* * * * *

PART 773—REQUIREMENTS ON PERMITS AND PERMIT PROCESSING

11. The authority citation for part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a, Executive Order 11593, 16 U.S.C. 469 seq., and 16 U.S.C. 470aa *et seq.*

12. Section 773.12 is revised to read as follows:

§ 773.12 Regulatory requirements with requirements under other laws.

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); Executive Order 11593; for Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*) Where OSMRE is the regulatory authority and where lands covered by that Act are involved.

13. Section 773.15 is amended by revising paragraph (c)(11) to read as follows:

§ 773.15 Review of permit applications.

* * * * *

(c) * * *

(11) The regulatory authority has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places.

* * * * *

PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

14. The authority citation for part 779 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

15 Section 779.12 is amended by revising paragraph (b) to read as follows:

§ 779.12 General environmental resources information.

* * * * *

(b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. (1) The description shall be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies. Based on this information, the applicant may recommend to the regulatory authority appropriate identification, evaluation, or mitigation measures.

(2) The regulatory authority may require the applicant to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places, through (i) collection of additional information, (ii) conduct of field investigation, or (iii) other appropriate analyses.

16. Section 779.24 is amended by revising paragraph (j) to read as follows:

§ 779.24 Maps: General requirements.

* * * * *

(j) Each cemetery that is located in or within 100 feet of the proposed permit area.

* * * * *

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

17. The authority citation for part 780 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

18. Section 780.31 is revised to read as follows:

§ 780.31 Protection of public parks and historic places.

(a) For any public parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measure to be used (1) to prevent impacts, or (2) if valid existing rights exist or joint agency approval is to be obtained under § 761.12(f) of this chapter, to minimize impacts.

(b) The regulatory authority may require the applicant or operator to protect historic properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures prior to the commencement of any specific mining operation which would affect such properties.

PART 783—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

19. The authority citation for part 783 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

§ 783.12 General environmental resources information.

* * * * *

(b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. (1) The description shall be based on all available information, including, but not limited to, date of State and local archeological, historic, and cultural preservation agencies. Based on this information, the applicant may recommend to the regulatory authority appropriate identification, evaluation, or mitigation measure.

(2) The regulatory authority may require the applicant to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places, through the (i) collection of additional information, (ii) conduct of field investigation, or (iii) other appropriate analyses.

21. Section 783.24 is amended by revising paragraph (j) to read as follows:

783.24 Maps: General requirements.

* * * * *

(j) Each cemetery that is located in or within 100 feet of the proposed permit area.

* * * * *

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

22. The authority citation for part 784 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

23. Section 784.17 is revised to read as follows:

784.17 Protection of public parks and historic places.

(a) For any public parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall described the measures to be used (1) to prevent impacts, or (2) if valid existing rights exist or joint agency approval is to be obtained under §761.12(f) of this chapter, to minimize impacts.

(b) The regulatory authority may require the applicant or operation to protect historic properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures prior to the commencement of any specific mining operations which would affect such properties.

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H.R. 4130/Pub. L. 99-255

To establish, for the purpose of implementing any order issued by the President for fiscal year 1986 under any law providing for sequestration of new loan guarantee commitments, a guaranteed loan limitation amount applicable to chapter 37 of title 38, United States Code, for fiscal year 1986. (Mar. 7, 1986; 100 Stat. 39; 1 page) Price: $1.00

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